TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 1441.

PULLMAN'S PALACE CAR COMPANY, APPELLANT,

vs.

CENTRAL TRANSPORTATION COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

FILED MARCH 5, 1896.

(16,212.)

(16,212.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 922.

PULLMAN'S PALACE CAR COMPANY, APPELLANT,

vs.

CENTRAL TRANSPORTATION COMPANY.

PEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

INDEX.

	Original.	Print.
tion	1	1
of complaint	2	1
Exhibit A—Agreement between Central Transportation Co. and Pullman's Palace Car Co., February 17, 1870	34	23
B—Agreement between Pennsylvania R. R. Co. and Pullman's Palace Car Co., January 27, 1870	40	27
C—Proceedings of board of directors of Central Transportation Company	46	30
D—List of railroads	53	35
E—Letter from Pullman's Car Co. to Central Transportation Co., June 28, 1886, enclosing copy of resolution	54	35
F—Statement of property tendered by Pullman's Palace Car Co. in connection with letter of June 28, 1886, and accompanying resolution	56	37

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., MARCH 27, 1896.

	Original.	Print.
Exhibit G—Act to extend charter of Central Transportation Co., approved February 9, 1870	57	37
H—Agreement between Pennsylvania R. R. Co. and Pullman's Palace Car Co., January 26, 1885	58	38
Supplementary agreement, January 27, 1885	84	52
Answer	92	55
Motion for injunction	110	66
Affidavits on motion for injunction	111	66
Affidavit of Augustus O. Bacon	111	66
Charles E. Pugh	120	71
Wm. S. Lane	125	73
Wm. J. Howard	131	77
John A. Wright	139	81
Geo. M. Pullman	140	82
Horace Porter	149	87
E. H. Goodman	159	92
Stephen Little	163	94
Henry S. Billings	175	102
David L. Sylvester	176	103
Hearing on motion for injunction	178	104
Decree for preliminary injunction	179	104
Replication	180	105
Motion for injunction to restrain defendant from prosecuting suit at law, &c	181	105
Complainant's *prima facie* case on original bill	182	106
Testimony of W. J. Howard	183	106
Stipulation that exhibits to bill are correct	185	108
Testimony of Wm. S. Lane	247	140
Resolution of stockholders of April 21, 1884	264	149
Testimony of John A. Wright	300	169
Charles S. Atterbury	320	180
Joseph N. Mileham	338	189
Henry S. Billings	351	197
George M. Pullman	362	203
Job H. Jackson	422	235
Horace Porter	433	241
Charles E. Pugh	486	269
Edward H. Goodman	490	272
Benjamin K. Verbryck	706	387
W. B. Snow	714	391
George F. Brown	724	396
F. C. N. Robertson	730	399
Statement of general earnings during the 17 months	733	401
Testimony of James F. Bird	848	464
Exhibit A—Statement of earnings by lines on Pennsylvania R. R	873	479
B—Statement showing shopping and idle margin	874	480
C—Statement showing special-service earnings	875	481
Testimony of F. C. N. Robertson (recalled)	876	481
Summary of bill of repairs	894	491
Testimony of James H. Smith	896	492
Notice to take testimony	929	509

	Original.	Print.
Stipulation for taking Mr. Bacon's testimony	930	510
Testimony of Augustus O. Bacon	931	510
Exhibit Notices to Central Transportation Co.	951	521
Waivers of signatures	969	530
By-laws of Pullman's Palace Car Company	969	530
Charter of Central Transportation Co	971	530
Act extending, &c., charter of Central Transportation Company	973	532
Testimony of John F. Glosser	974	532
Admission that Central Transportation Co. is not now engaged in business	982	536
Letter of Mr. Johnson concerning tender	982	537
Statement of earnings submitted to Central Transportation Company in January, 1885	986	538
Statement of cost of repairs, &c	988	540
Hearing on motion for injunction to restrain defendant from prosecuting any suit at law, &c	989	541
Opinion denying motion for injunction, &c	990	541
Petition for sale of cars	993	542
Exhibit A—Agreement of February 17, 1870	1001	545
B—Notice of June 28, 1886	1007	549
C—Tender of property	1009	550
Motion to dismiss bill	1011	551
Hearing on motion to dismiss bill	1012	551
Motion for leave to file cross-bill	1013	552
Rehearing on motion to dismiss bill	1014	552
Hearing on motion for leave to file cross-bill	1014	552
Opinion dismissing plaintiff's motion to dismiss bill and allowing defendant's motion to file a cross-bill	1015	552
Cross-bill of Central Transportation Company	1018	554
Complainant's demurrer No. 1 to defendant's cross-bill	1025	558
No. 2 to defendant's cross-bill	1028	559
No. 3 to defendant's cross-bill	1031	560
Hearing on demurrers	1034	560
Order overruling demurrers	1035	562
Answer to cross-bill	1036	562
Exhibit A—Contract of Woodruff *et al.* with Pennsylvania R. R. Co., September 15, 1858	1047	570
Contract of Woodruff *et al.* with Northern Central R'y Co., June 30, 1862	1050	572
Contract of Knight *et al.* with B. & O. R. R. Co., December 22, 1862, and January 5, 1863	1052	574
Assignment of Knight *et al.* to Central Transportation Co., July 1, 1863	1056	576
Agreement between Central Transportation Co., B. & O. R. R. Co., and P., W. & B. R. R. Co., April 12, 1864	1056	576
Agreement between P., Ft. W. & C. R'y Co. and Woodruff *et al.*, May 1, 1862	1059	578
Agreement between Central Transportation Co. and C., H. & D. and D. & M. R. R. Co., September 26, 1864	1063	581

	Original.	Pri
Exhibit A—Agreement between Woodruff *et al.* and B. & I. and I., P. & C. R. R. Co., May 28, 1862	1066	5
Agreement between Central Transportation Co. and M. & C. R. R. Co., September 10, 1864	1068	5
Agreement between Central Transportation Co. and Central Ohio R. R. Co., Sept. 14, 1864	1070	5
Agreement between Central Transportation Co. and I. & C. R. R. Co., September 26, 1864	1073	5
Agreement between Central Transportation Co. and Ohio & Miss. R. R. Co., December 21, 1867	1075	5
Agreement between Central Transportation Co. and C., C. & I. C. R. R. Co., August 10, 1868	1078	5
Agreement between Central Transportation Co. and T. H. & I. R. R. Co., September 1, 1868	1080	5
Agreement between Central Transportation Co. and St. L., V. & T. H. R. R. Co., September 1, 1868	1083	5
Agreement between Central Transportation Co. and J., M. & I. R. R. Co., October 6, 1868	1085	5
Agreement between Central Transportation Co. and L., C. & L. R. R. Co., August 17, 1869	1088	5
Agreement between Central Transportation Co. and Geo. M. Pullman, trustee, February 17, 1870	1090	6
Statement of debts of Central Transportation Co., December 31, 1869	1094	6
Exhibit B—Statement of the 119 Central Transportation Co.'s cars turned over to Pullman Company	1097	6
C—Inventories of equipment in cars and stock rooms of the Central Transportation Company, December 31, 1869	1101	6
Replication to answer to cross-bill	1135	6
Proofs on behalf of the Pullman's Palace Car Company	1136	6
Testimony of F. C. N. Robertson	1136	6
Edward H. Williams	1166	6
G. Clinton Gardner	1180	6
Frederick Knowland	1195	6
James D. Layng	1221	6
A. J. Cassatt	1242	7
W. J. Howard	1272	7
John W. Clark	1285	7
George W. Humphreys	1291	7
H. H. Sessions	1299	7
Exhibit A—Diagram	1301	7
B—Diagram	1302	7
C—Diagram	1305	7
D—Diagram	1307	7
E—Diagram	1314	7
James Martin	1321	7
Opinion of Judge Butler, December 18, 1894	1329	7
Testimony of Dolphus Torrey	1344	7
History of Central Transportation cars	1387	7
Testimony of Dolphus Torrey (recalled)	1436	8

	Original.	Print.
Equipment inventory	1442	803
Agreements as to patents	1448	807
Exhibit A	1458	814
Railway contracts	1458	814
Patent assignment	1502	845
Debts of Central Transportation Company	1505	847
Testimony of F. C. N. Robertson	1508	849
Cost of Pullman parlor-car sleepers	1510	850
Amounts received for Central Transportation cars	1514	853
Testimony of J. F. Bird	1529	862
Central Transportation cars, last earnings	1531	863
Central Transportation cars, net earnings	1535	866
Arguments on objections	1546	872
Analytical statements	1567	884
Central Transportation division ledger	1579	896
Earnings under sixteen contracts	1580	897
F. C. N. Robertson's supplemental statements	1599	909
Proofs on behalf of the Central Transportation Company	1611	920
Testimony of Frank Weckerly	1612	920
Cost of Central Company's plant	1613	921
Summary of business of Central Company	1790	1043
Minutes of Central Company	1791	1044
Testimony of Dolphus Torrey	1793	1046
F. Weckerly (recalled)	1812	1059
William A. Brown	1861	1094
Brown Patent No. 29137	1880	1107
Seventeen-year statement of Pullman Company	1887	1112
Statement of Pullman Company, 1884	1888	1112
1886	1891	1114
1887	1893	1115
Testimony of Joseph G. Goodman	1896	1117
F. Weckerly (recalled)	1900	1120
Statement of Pullman Company for 1889	1902	1122
1890	1904	1123
Hearing on pleadings and proofs	1908	1125
Opinion referring subject to Theodore M. Etting, Esq., as master, &c.	1909	1126
Master's report	1928	1133
Exceptions of Central Transportation Company to report of the master, &c.	2006	1183
Additional exceptions of Pullman's Palace Car Company to report of the master, &c.	2009	1185
Master's supplemental report	2010	1185
Exceptions of Central Transportation Co.	2012	1187
Pullman's Palace Car Co	2015	1188
Additional exceptions of Pullman's Palace Car Co.	2025	1193
Hearing on exceptions to master's report	2026	1193
Opinion ordering decree dismissing exceptions to report of master and confirming his report	2027	1194
Decree dismissing exceptions to master's report, &c.	2035	1197
Petition of Pullman's Palace Car Company for allowance of appeal to Supreme Court of the United States	2036	1198
Hearing on petition of Pullman's Palace Car Company.	2039	1199

	Original.	Print.
Opinion denying special allocatur surpetition of Pullman's Palace Car Co. for an appeal direct to Supreme Court of the United States	2040	1199
Assignments of errors	2042	1200
Petition for allowance of appeal to Supreme Court of the United States	2052	1204
Allowance of appeal to Supreme Court of the United States by Associate Justice Shiras	2053	1204
Bond surappeal	2054	1204
Citation with acceptance of service	2062	1208
Clerk's certificate	2063	1209

1 Circuit Court of the United States, Eastern District of Pennsylvania, October Session, 1886.

PULLMAN'S PALACE CAR COMPANY
vs.
CENTRAL TRANSPORTATION COMPANY. } No. 44.

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, } *ss:*

Pleas and proceedings before the honorable the judge of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, of October session, 1886. No. 44.

It is thus contained:

Be it remembered that on the twenty-fifth day of January, in the year of our Lord one thousand eight hundred and eighty-seven, the Pullman's Palace Car Company, by its solicitor, Samuel Dickson, Esquire, comes into our court here and files its bill of complaint against the Central Transportation Company; which, being read, is in the words and figures following, to wit:

2 In the United States Circuit Court, Eastern District of Pennsylvania.

PULLMAN'S PALACE CAR COMPANY
vs.
CENTRAL TRANSPORTATION COMPANY. } In Chancery.

Pullman's Palace Car Company, a corporation created by the State of Illinois, and having its principal place of business in the city of Chicago, in the State of Illinois, and a citizen of said State, brings this, its bill of complaint, against the Central Transportation Company, a corporation created by the laws of the Commonwealth of Pennsylvania, and having its principal office in the city of Philadelphia, in the eastern district, in the said State of Pennsylvania and a citizen of said State; and thereupon your orator complains and says:

That on and prior to the 17th day of February, A. D. 1870, your orator and said defendant were severally engaged in the busi-
3 ness of operating railway cars, known as the sleeping cars, and of hiring the same to railroad companies, under written contracts, to be used and employed on and over the lines of the road of said railway companies, receiving therefore income and revenue by the sale to passengers of the berths and accommodations therein. That on said 17th day of February, your orator and said defendant entered into a contract of lease, whereby the said defendant assumed to lease to your orator, for the term of ninety-nine years, 119 sleeping cars then owned by it, and agreed to and did assign and transfer to your orator certain patent right concern-

ing the manufacture of sleeping cars then owned by it, and also certain contracts then held by it with certain sixteen railroad companies for the operation of sleeping cars over their lines of railroad, being all the cars, patent rights, contracts or other property which said lessor then owned, and furthermore covenanted that it would not engage in the business contemplated by its charter during the period provided for the duration of said lease; a copy of which lease is hereto attached as Exhibit A, and reference made thereto as fully as if the same were herein set forth at length.

That one paragraph of said lease expressing the covenants of your orator with the said defendant was as follows:

"Second. That they shall and will, so long as the said assigned contracts exist, and for the period of any new or other contract with the said railroad companies, or either of them, or their successors and assigns, of like general character, in good faith continue and carry on the business as authorized by their charter."

That another of said paragraphs of said lease was as follows:

"Third. That they shall and will, during the said term of ninety-nine years, keep or cause to be kept in good order and repair, or renewed and reconstructed as often as may be needful, the said one hundred and nineteen cars, and the furniture, bedding, bedclothing and apparel thereof."

That other of said paragraphs of said lease were as follows:

4 "Sixth. That the parties hereto shall and will, at all proper times and manner, exert their influence to obtain renewal or new contracts with said railroad companies, for and in respect to the use and employment of the cars of the second party, on and over their lines of railroads, in carrying on their said business, and the first party shall and will not engage in the business of manufacturing, using, or hiring sleeping cars, while this contract remains in full force and effect."

"Seventh. That such renewal or new contract may be made in the name of the party of the second part, their successors and assigns; but in the event of the termination of this contract under any of the clauses hereof, the same shall be thereupon assigned and transferred unto the party of the first part."

That another of said paragraphs was as follows:

"Eighth. In the event that any of the railroad companies mentioned in the assigned contracts shall at any time during this agreement refuse to permit the cars of the second party (orator) to be run on and over their respectives lines of roads, so that by reason of such prevention or refusal, the profits, income, revenue derived from and under any other and remaining contracts with other and remaining railroad companies mentioned in the assigned contracts shall fall below the sum of two hundred and sixty-four thousand dollar ($264,000), then and in that event said second party shall have the right either to declare this contract null and void, and surrender to said first party the said hereinbefore-demised property, or shall and will pay in like manner, in lieu of the said sum of two hundred and sixty-four thousand dollars ($264,000), such sum or

share of the net revenues from the remaining lines of roads as the parties hereto may at that time agree upon."

That another paragraph of said lease was as follows:

"Ninth. And the party of the second part (orator) covenant and agree with the party of the first part, that on the expiration of the said term of ninety-nine years they will redeliver to said first party the said one hundred and nineteen cars, furniture, bedding, bedclothing and apparel, in like good order as the same now are, with such additions, betterments and improvements as shall be made thereto, or in renewal or substitution thereof, together with any unexpired contracts between said second party and any of the railroad companies mentioned in the assigned contracts, for and in respect to the use and employment of said cars on and over their lines of railroads."

That about the time of the making of said lease the contract theretofore existing between the Pennsylvania Railroad Company and defendant, for the operation of sleeping cars upon the lines of the said railroad company was terminated, and your orator made and entered into a contract with said Pennsylvania Railroad Company, dated and to take effect from the 27th day of January, A. D. 1870, and to continue till January 27, 1885, for the running and operating of sleeping cars upon the lines of the Pennsylvania Railroad Company, by your orator, a copy of which contract is hereto attached, marked Exhibit B, and reference made thereto with like effect as if the same were herein set forth at length.

That your orator kept and performed, in all respects, the covenants contained in said contract made with the Pennsylvania Railroad Company until the expiration thereof.

That prior to the expiration, on January 27, 1885, of said contract, so made by your orator with the Pennsylvania Railroad Company, all the patent rights assigned to your orator by said lease with defendant had expired.

That from time to time all the contracts with railroad companies, for the operation of sleeping cars upon their lines of railroad, which had been assigned to your orator by said defendant, severally expired, and many of them were not renewed, because neither your orator nor the defendant could procure renewal thereof, and thereby the revenues derived thence by your orator became greatly diminished, and before said 27th day of January, A. D. 1885, when said contract with the Pennsylvania Railroad Company would expire, there remained of said contracts only the contract with the Pennsylvania Railroad Company, and a contract with the Cincinnati, Hamilton and Dayton Railroad Company, which latter company operated but three or four sleeping cars, and that contract has since then expired.

That, nevertheless, your orator performing in good faith the covenants contained in said lease between defendant and your orator, paid to said defendant the sum of $264,000 per annum for the period from the date of said contract up to the 27th day of January, 1885, the day at which your orator's contract with the Pennsylvania Railroad Company expired as aforesaid.

That the 119 cars so demised to your orator by said defendant, on the 17th day of February, A. D. 1870, were many of them old and worn out, of bad construction, not containing the latest improvements and devices then in use in sleeping cars, and otherwise were in such condition that it was difficult to obtain the consent of railroad companies to allow them to be operated upon their lines of road as sleeping cars; that most of said cars needed extensive repairs immediately upon coming into the hands of your orator, and many of them were during the year 1870, and one or two years then next succeeding, condemned as unfit for service and incapable, on account of original plan of construction, of being put in such order and condition as would make them acceptable to railroad companies; and they ceased to be operated for the reason that no railroad company would permit the same to be run over their roads. And your orator was thereby put to great expense repairing, renewing, reconstructing and replacing the same; and your orator was immediately put to very great expense in maintaining such of said demised cars as were permitted to run upon lines of railroad as sleeping cars, in a safe and proper condition for operation.

That more particularly did said Pennsylvania Railroad Company, upon whose lines of road eighty-four of said demised cars were being operated when received by your orator, object to the continuance upon its lines of said cars, and insist that your orator must take said demised cars from their lines and operate upon its road new and improved cars owned by your orator; that your orator was forced to accede to said demand of the Pennsylvania Railroad Company; and from time to time, and within three or four years
7 after your orator made said contract with said defendant, almost all of said demised cars had been taken off the lines of railroad of the said Pennsylvania Railroad Company, and new and improved cars, costing on an average over $15,000 each, belonging to your orator, were placed upon said Pennsylvania Company's road.

That notwithstanding the bad condition of said 119 cars, your orator faithfully performed all its covenants with said defendant, and, from the time of the making of said lease to the 27th day of January, A. D. 1885, paid to said defendant, as rent thereunder, upwards of $3,900,000, although, as your orator is informed and believes, all the property demised as aforesaid to your orator by said defendant had not cost, when new, to exceed the sum of $1,200,000.

And your orator further alleges that, during the continuance of said contract of lease as aforesaid, in addition to the eighty-four cars used on the Pennsylvania railroad it became necessary for your orator to supply other and additional equipment to meet the necessities of such railroad, and that it was obliged to furnish additional cars, which cost several hundreds of thousands of dollars, and there was upon said Pennsylvania Railroad Company's lines, being operated, a large number of cars in excess of the cars demised or cars which had been substituted in lieu thereof.

And your orator represents and insists that by the terms of said

lease, in the paragraph designated as "eighth," as aforesaid, the right was expressly given to it to elect in the contingency specified whether it would annul the said lease or would continue to operate under it, paying the defendant a share of the net revenue to be thence derived, said share to be such as the parties to said lease should agree upon; and that the terms of said lease made the election of your orator conclusive and included in legal effect a covenant of the defendant, that in the latter event, namely, of such election to operate the lease and pay a share of the net revenue, it would agree with your orator upon a share of such net revenue and would accept the same instead of the former fixed sum ex-
8 pressed in said lease; and that in no event could your orator be holden for more than some part of the actual net revenue arising from the operation of the lease; so that in said latter event nothing would remain to be done between your orator and the defendant but to fix the amount of such share, which was afterwards attempted to be done as hereinafter stated.

And your orator alleges that some time previous to the expiration of the contract with the Pennsylvania Railroad Company, without which contract, or a very advantageous renewal thereof, the net revenue derived from the use of the demised property would fall under the amount of $264,000 per annum, the rental reserved to be paid under the covenants of said original contract of lease, and being influenced by declarations of the principal officers of said railroad company, of which your orator was advised and which it believed, that there was little hope for renewal of terms as favorable as those of the contract which was then in existence, your orator, in anticipation of such refusal to renew said contract by the Pennsylvania Railroad Company, under the terms and provisions of the "eighth" section of said lease, commenced the preparation necessary to exercise the option reserved to it as aforesaid and to declare said lease with defendant null and void, and to surrender the demised property under the provisions and conditions thereof, and for this purpose instructed its general counsel, Judge Lochrane, to take such steps in the premises as would facilitate the act of surrender of the demised property, and to ascertain the condition of the 119 cars, or of the cars which had been furnished during the operation of said lease in substitution therefor. And your orator states that it was informed by said counsel, from time to time, of the progress and results of such preparation, and while such preparations for surrender were proceeding as aforesaid, your orator, through its president, Mr. George M. Pullman, had from time to time frequent conferences and interviews with the directors and other officers and stockholders of defendant, concerning such exercise of your orator's option of ending said original lease.

And your orator alleges that at such frequent interviews
9 and conferences it was distinctly understood and agreed by the defendant, that there was no possible hope of making a contract with the Pennsylvania Railroad Company for the renewal of their contract upon terms anything like as favorable as those under the then contract; and that said board of directors pressed

your orator to continue to operate the lease and to make a new contract with the Pennsylvania Railroad Company, well knowing that no contract could be procured from said railroad company, in renewal or in place of the contract about to expire, that would yield a net revenue of anything like the sum of $264,000 annually; and alleges that all the various negotiations directed toward such contract were carried on at defendant's request; and that, with a perfect understanding on its part of the premises stated, it was agreed that the defendant company would not, if the lease should be continued, claim or expect that the annual rental of $264,000 a year should continue after the termination of said expiring contract with the Pennsylvania Railroad Company; and that it was further agreed that, if your orator would not end said lease and surrender said property as it then contemplated, but would adopt the other alternative provided in said lease, namely, to pay the defendant a share of the net revenue to arise from operating the same, an agreement would be afterwards and in due time made by the defendant upon the amount thereof, or for a rental, based upon the net revenue which such new contract as was proposed, or as might be obtained, would enable to be earned from the operation of sleeping cars on the Pennsylvania railroad lines. And in reliance thereon your orator so elected; and has performed all that it so agreed to do; and it was thus definitely agreed that the operation of the lease should be continued under the provisions of said "eighth" section aforesaid, which provided for that as an alternative right of your orator, and equally extinguished the rental of $264,000 per annum instead of exercising the right to annul the lease and stop the further operation of it; and your orator represents and insists that said agreement as to so much, at least, was not only fully within the power of the directors of said defendant, but, moreover, was so definitely agreed upon by authority of the stockholders of said defendant company.

10 And your orator, relying upon such assurances of said directors of defendant that if your orator continued to operate the lease, the amount to be paid would be established at a reasonable share of the net revenues which might be earned under such new contract with the Pennsylvania Railroad Company, as might be procured, desisted from further proceeding with preparation for the termination of said lease and surrender of the demised property; and on the contrary yielded to the request of the defendant and elected to take the other alternative provided in said "eighth" section, namely, to operate the lease and pay the defendant a share of the net revenue, and accordingly prosecuted negotiations with the Pennsylvania Railroad Company, for the purpose of procuring a new contract with it.

And your orator represents that by the charter of the defendant corporation the power and authority to "manage the stock, property and affairs" thereof were committed to and lodged in its board of directors; that they were ample for all the actions and the agreement aforesaid; and that this exercise of such powers was conclusive upon the defendant, and was not subject or intended to be controlled

by its stockholders, as was afterwards fraudulently claimed, as hereinafter set forth.

And your orator alleges that the directors of defendant offered to co-operate with and assist your orator in obtaining from said railroad company such new contract; and your orator did frequently meet the officers of the said railroad company and discuss with them the terms upon which a contract might be effected, and did, by the use of every argument and presentation of fact that it could urge upon the railroad company, finally prevail upon said railroad company to make an agreement for the execution of a contract, the terms and provisions of which were the most favorable that could be obtained, and were reduced to writing as such negotiations progressed. And the said contract in its detail as well as in the result of its operation, showing the net earnings that might be relied upon or expected from it, and that such net earnings would be very much less than $264,000 per annum, was presented from time to
11 time, as negotiations for the same progressed, by your orator to the directors of defendant, and all said matters were discussed with said directors, who were entirely familiar with every step that was taken or was proposed to be taken by your orator in bringing such contract to a final consummation, and approved of the same, in connection with your orator's electing and undertaking as aforesaid to operate said lease and pay a share of the net revenue to the defendant, as provided in said lease, instead of ending the same.

And your orator alleges that while such negotiations were pending, and while your orator was committing itself to the operation of the lease and payment of a share of net revenue as aforesaid, and the election of that alternative instead of annulling the lease; and while your orator was induced thereto, as the defendant's directors and stockholders well knew, by their assurances aforesaid, the existing contract between the Pennsylvania Railroad Company and your orator expired.

And your orator shows that although as just stated, said defendant and the directors thereof knew that under the proposed new contract with the railroad company the net earnings would fall far below $264,000 per annum, they continuously urged your orator to make the same, and it was made, "with the approbation of the transportation company, and its influence exerted as far as practicable" in the procurement thereof; as is shown by the resolutions of the board of directors of said defendant hereinafter mentioned, as it was considered by said defendant that said lease, even at such diminished revenue, would be better for it than a surrender under said "eighth" section, resulting in throwing upon its hands cars, expensive to protect and difficult of use for sleeping-car purposes; and said directors, as well as your orator, knew that the Pennsylvania Railroad Company would not permit the said cars to be run upon its road, nor, under any circumstances, make any contract with said defendant for running sleeping cars.

After it had been thus definitely agreed between your orator and the defendant that after the expiration of the then existing contract

with said railroad company it would be impossible to earn
12 under said lease a revenue equal to $264,000 per annum, and after your orator had, in reliance upon and induced by the assurances and agreement of the defendant, as aforesaid, abandoned its purpose of annulling said lease; and after it had instead thereof elected as aforesaid to continue to operate and to pay defendant a sum for its share of the net revenue; and after the defendant had assented to and acquiesced in the said election, which it had induced your orator to make, as aforesaid, it remained to fix and determine the amount to be paid the defendant as and for its said share of said net revenue. But it was understood that this amount would depend upon the terms of the new contract your orator and the defendant was so arranging with said railroad company; for the terms of said contract would determine the amount of revenue that could be earned under said lease. The amount to be paid the defendant was therefore of necessity left undetermined for the time being, and to remain for future adjustment when the terms should be finally ascertained upon which said contract could be made; and it came to be considerd that it might be also for the mutual advantage of the parties to make some modifications and changes in the provisions of the contract of lease itself. And some such modifications were afterwards arranged between your orator and the directors of said defendant company, which said directors were to submit to the stockholders of the defendant; and said modifications were afterwards included in and expressed in a certain agreement in writing hereinafter mentioned; in which agreement the annual amount to be paid by your orator to the defendant as and for its share of the net revenue aforesaid was also expressed as it had been agreed upon between your orator and the board of directors of said defendant.

Your orator alleges that between your orator and the directors of the defendant there had been various discussions as to the amount your orator should pay after the commencement of operations under the new contract proposed to be made with the Pennsylvania Railroad Company. It was understood and agreed that the amount to be paid was to be based on the net revenue that could be earned
13 under the said new railroad contract, and was to be some share or portion thereof. It was proposed and agreed that the amount of such portion should be fixed between the parties, and that your orator should pay a fixed sum annually instead of a sum to be ascertained from time to time by a percentage—as a fourth or third or half or other similar mode, which would make the amount payable to the defendant variable — becomes dependent upon the varying earnings under the lease. With the understanding, as previously stated, that there would and could be no claim whatsoever for continuance of the rental of $264,000 per annum, and that such sum could not be earned, negotiations commenced first with a proposition made by defendant for $144,000 rent per annum, then for $120,000 per annum, then for $110,000 per annum, then for $88,000 per annum, all of which propositions were in turn declined by your orator. That finally the sum of $66,000 was agreed upon as the amount or share to be paid the defendant in case the new contract

which was then proposed with the Pennsylvania Railroad Company should be concluded; and your orator avers that the sum of $66,000 was more than a fair share of such estimated net revenues, under said proposed contract with the Pennsylvania Railroad Company.

And your orator states that it could make no better terms with the railroad company than those proposed by the contemplated contract, for the reason, which was communicated to the directors of defendant, and stated by the Pennsylvania Railroad Company, that said railroad company could procure all the cars that they wanted to operate as sleeping cars on their lines, at the rate of five per cent. on the capital invested therein, and that it would under no circumstance allow more than the amount proposed by the new contract to your orator, which would yield a probable net amount of six per cent. on the capital invested in the cars necessary to supply the lines of said Pennsylvania Railroad Company, and the $66,000 agreed upon would yield the said defendant five and one-half per cent. on the amount actually invested by it in the demised property.

That by reason of the foregoing the time had been mean-
14 while permitted to elapse at which the old contract with the Pennsylvania Railroad Company expired, and that company was pressing your orator for a definite answer as to whether your orator would adopt the proposed new contract, and it became necessary for your orator to act and give such answer to the president of said railroad company by eleven o'clock on the 28th of February, 1885, at which time your orator agreed to make such answer in the premises. By reason of such necessity for an answer on its part, it became important for it that a formal agreement confirming and evidencing the matters aforesaid and also fixing the said amount of $66,000 per annum, previously settled upon, should be put in written form, previous to your orator assuming the obligations and binding itself to the terms and provisions of the new contract proposed with the railroad company. That to obtain such evidence and agreement in such form your orator did, on the afternoon of the 27th of February, 1885, go to the place in the city of Philadelphia where defendant's board of directors were convened and in session, and the officers of your orator, after waiting some time, were invited in to meet said board, and, as a final answer, were informed by said board that the board of directors of defendant had approved the terms of a certain contract then in writing, fixing the amount to be paid defendant from the 27th of January, A. D. 1885, at $66,000 per annum, and also expressing certain modifications of the lease, which were proposed as hereinbefore stated. And your orator avers that it was then and there announced by the said board of directors of defendant to your orator, that they had unanimously approved the terms of the proposed agreement then in writing, affirming the acts and matters aforesaid and fixing said amount at $66,000 per annum; and that the same would have been then and there executed and delivered to your orator, but that the seal of the company was in a different part of the city; and it was agreed that they should meet your orator the next morning at nine o'clock to execute the said contract, which your orator alleges defendant did, and which it then

and there delivered to your orator for the purpose of enabling it to consummate the new railroad contract that same day, and a
15 few hours thereafter; a copy of which contract containing recitals as aforesaid, and specifying said rental, and also certain changes in and modifications of the original lease is contained in Exhibit C, hereto attached and made part of this bill.

And your orator avers that certain resolutions hereinafter shown as said Exhibit C were adopted by the said directors on the 26th and 27th days of February, A. D. 1885; that the acknowledgment and agreement of the defendant that the net revenue possible under the lease had fallen below the sum of $264,000 per annum; and that your orator had elected to pay the defendant a share of the actual net revenue derived from operating the lease; and the acquiescence of said defendant theretofore in said election and its assent thereto; and its agreement that the amount to be paid thereafter by your orator was to be "based on the contract it could make with the Pennsylvania Railroad Company," and that the amount agreed upon was to represent "the share of the profits which" the defendant would "be entitled to receive" are expressed in and shown by the preambles and resolutions, as will appear by the said preambles and resolutions if said defendant shall produce the original record thereof, and by a copy thereof hereto attached and marked Exhibit C, to which reference is hereby made as a part of this bill.

Your orator avers that the said contract so far as it relates to the amount to be paid therefor by your orator to the defendant was based specifically upon acknowledgment of that fact, which by the lease was made the condition precedent of the right of your orator to avail itself of the alternatives declared by said "eighth" section of said lease, and to make the election provided for therein, namely, the decline of the revenue under said lease to less than the said sum of $264,000 per annum; and upon said "eighth" section which is set out and recited in said contract; and the future amount to be paid thereunder by your orator was specifically based upon the amount of net revenue that might be earned under said lease; and was to be a share thereof. And your orator insists and represents that all that was done in and about that matter was fully within the powers of the legitimate province of the board of directors of the said defendant company.

16 And your orator alleges that as soon as said executed paper fixing said amount or share was delivered to it, and having elected as aforesaid, it went to the office of the railroad company and then and there assumed the obligations of the contract which had been previously agreed upon with the railroad company, and the provisions of which, as hereinbefore stated, were well known to the defendant; and immediately thereafter, in pursuance of such new contract, your orator assigned cars and entered upon the performance of said new contract over the lines of the Pennsylvania Railroad Company, which contract it has since been obliged to execute and perform as an act of good faith on its part as well as of legal obligations; although said defendant, as hereinafter stated,

has by device and in bad faith attempted to evade and avoid the obligations of its undertaking as herein previously stated.

Your orator alleges that said railroad contract and the supplemental agreement made in regard thereto are the result of the closest and most careful consideration your orator could give to the same, and the very best contract that could be made with the said Pennsylvania Railroad Company, a copy of which contract is hereto attached as Exhibit D, and reference thereto is hereby made with like effect as if the same were here repeated at length.

And your orator shows that by said new contract with the Pennsylvania Railroad Company it is not allowed mileage where it was allowed mileage under the old contract with said railroad company, and is now allowed only part of the cost of cleansing the sleeping cars, which two items reduce the net profits which your orator can make out of running sleeping cars on said railroad by the amount of more than $360,000 per annum, and no corresponding gain in net earnings is allowed your orator under said new contract, and thereby the net earnings of your orator under said new contract are more than $360,000 less than they were under the old.

Your orator states that in making the new contract with the Pennsylvania Railroad Company as hereinbefore set forth, it included therein certain lines of railroad with which defendant had no contract at the time that the original lease was made between your orator and the defendant, amounting to over — miles in all, and which include important lines; that it included in such railroad contract the Baltimore and Potomac railroad between Baltimore and Washington, and between Washington and Alexandria and Quantico, which is one of the most important links in the whole system of railroads contained in said contract with the Pennsylvania Railroad Company, being the outlet for all the passenger travel from the north and northeast of Washington, and forming connections with the Chesapeake and Ohio, the Virginia Midland, the Richmond and Danville, the Atlantic Coast Line system, and, in fact, the whole network of railroads, covering the most important points in the South. A list of said railroads is hereto attached as Exhibit D; to which the usual leave of reference is asked.

17

Your orator shows that it accepted this new contract with the railroad company, by its terms expressly made unassignable, relying upon the said inducements and assurances of defendant and the agreement above referred to, and now this would cause your orator great embarrassment in any performance of the literal terms of said lease as to surrendering the demised property to defendant, and particularly in determining and assigning to defendant such interest as defendant may be deemed to have in said new contract with the railroad company.

Your orator alleges that said contract being so unassignable imposes obligations upon your orator, which, if not carried out by your orator, might render it liable for damages which may be claimed of it by the Pennsylvania Railroad Company; that furthermore the said railroad contract must be executed as an entirety, and the cov-

enants and obligations thereof cannot be separated, and that your orator may be subjected to great embarrassment, hardship and injustice without the intervention of this court, and without any fault of your orator, but only from the bad faith of the defendant and through your orator's reliance upon its assurances and inducements aforesaid.

Your orator avers that it was induced to make and accept the said contract with the Pennsylvania Railroad Company by the inducement of the defendant, and at its request, and that it
18 accepted said railroad contract on the faith of the assurances and agreement of said defendant; that it was perfectly understood and agreed by defendant that the sum of $264,000 per annum could not possibly be earned under said contract, nor under any contract which could be made with said railroad company; and that the election of your orator under the provisions of said "eighth" section had done away altogether with the old rental theretofore reserved in the lease of $264,000 per annum; and that said rental would never thereafter be expected of your orator or claimed by the defendant; and that the said defendant cannot now be permitted to repudiate or evade the agreement and assurances aforesaid without great wrong and damage to your orator. Your orator insists, therefore, that the said defendant is equitably estopped to deny the facts recited and admitted as aforesaid in the preambles and resolutions of its board of directors above mentioned and shown in said Exhibit C; and that it is estopped by the recitals of said preambles and resolutions; and that it is equitably estopped to deny that the amount of $264,000 per annum is more than the total net earnings or revenue possible under the said lease; and is estopped to deny or dispute that the election of your orator aforesaid to continue to operate the business under the lease, paying to the defendant a share of the actual net revenue as provided in said "eighth" section, was made and was valid, binding and conclusive upon all the parties to said lease; and is equitably estopped to deny the intelligent and conclusive assent of the defendant to that election, and its acquiescence therein and acceptance thereof, and the extinguishment thereby of the former rental of $264,000 per annum; and is equitably estopped to deny or evade its agreement to accept a fixed annual rental which should be equivalent to and represent a reasonable share of the actual net revenue arising from the operation of the lease under said railroad contract.

And your orator states that after it had been induced to make said election as aforesaid, and said contract with the Pennsylvania Railroad Company, in reliance upon the assurances and the agreement hereinbefore stated, of the defendant, the said defendant, in bad faith and contrary to equity and good conscience, did
19 assert the right to and did repudiate the whole of said agreement made by it with your orator, and denied that the same was legally obligatory upon the defendant; and assumed to disaffirm as well the express right of conclusive election of your orator and its own acquiescence therein and agreement that the alternative provided in said "eighth" section should be adopted in lieu of the

annulment of the lease by your orator, as the settlement of the amount of the share of revenue to be paid, and the various modifications of the said lease; and notwithstanding the election made by your orator, as aforesaid, and the acquiescence of the defendant therein, and its agreement thereto, and its inducement of your orator to yield its purpose of annulling the lease, as aforesaid, and your orator's acceptance of the existing contract with the Pennsylvania Railroad Company, from which it cannot now recede nor disengage itself, and the action of the defendant inducing your orator to accept said contract, insists that your orator is bound and holden to continue to pay it the said sum of $264,000 per annum, though no such amount of revenue can be earned under the lease and the present railroad contract which the defendant has fastened upon your orator; and did institute a suit at law against your orator, to recover the original rent reserved under the covenants of the original lease, hereto attached as Exhibit A, in the court of common pleas of Philadelphia county, in the State of Pennsylvania, to the June term, 1885; in which suit the contract of the 28th of February, 1885, so executed and delivered by defendant to your orator, and all other acts of the defendant, were repudiated by said defendant; and after said cause was removed to this court, a judgment was obtained therein against your orator for the sum of $119,729.13; and another suit is now pending on the law side of this court, and defendant now threatens to bring other suits, based upon the same theory, that the original rental provided in the lease of 1870 is still obligatory upon your orator. But your orator insists that its election to operate the lease, paying a share of the net revenue, and the acquiescence of the defendant therein, and its inducements thereto, were conclusive upon the parties, and did away, in any event, finally and forever, with the original rental of $264,000, whatever might be the amount of the net revenue which the defendant might afterwards become entitled to receive; and that accordingly said judgment, or any other judgment which may be obtained in said suit now pending, or any suit which may be hereafter brought, and any money collected thereon, is a wrong committed on the rights of your orator, and it is unjust and inequitable for the said defendant to hold and keep the same. And your orator alleges that any amount which may be so received in excess of the rate of $66,000 per annum, or of the reasonable share of net earnings that may be held proper to be paid to said defendant, ought to be charged against defendant in a general accounting and adjustment to be had under this bill.

Your orator further shows that at the time of entering into said contract with the defendant in February, 1885, it had been and was advised that the directors of the defendant had power to make the whole of said contract, and each and every part thereof, but that in said proceedings at law, it appears to have been considered for the purposes of that suit that said contract is not binding as to the annual payment fixed; and it is claimed, which your orator denies, that by implication your orator is liable continuously to pay to said defendant the original rent under the lease, namely, at the rate

of $264,000 per annum, while your orator is not receiving and cannot earn one-quarter of that sum from the property so demised to it by defendant, or from any other rights acquired by it under the said lease, and under said contract with the Pennsylvania Railroad Company.

Your orator shows, accordingly, that the judgment recovered in said proceeding at law was a surprise, and the cause of sudden and extreme embarrassment. That the legal effect to be given to the right of your orator conferred in said "eighth" section, and to its aforesaid election thereunder, was not presented, although your orator is advised that its said election was in legal effect binding upon all parties; and that if it were otherwise the assent and acquiescence of the defendant made it obligatory and conclusive upon it, and that the agreement and assent of said board of direct-
21 ors to that effect was clearly and fully within the legitimate authority and province of said board, and was binding upon the defendant company. But your orator seemed threatened with an obligation to pay continuously to the defendant said sum of $264,000 per annum, without the possibility of earning anything like that sum, and being moreover bound and holden by the railroad contract aforesaid, which your orator had been induced by the said directors of said defendant to enter into, and the position appeared to your orator to be one not only of great injustice, but of grievous oppression and difficulty. Accordingly your orator seemed to be compelled to resort to the first alternative given in the lease in said "eighth" section, if its action under the second had turned out to be ineffectual, and it did, assuming to act under the provisions thereof, give notice to said defendant of an election to declare said lease entered into by it with defendant in 1870 null and void and terminated, and that it would surrender to defendant the property by said lease demised, and offered, and herewith again offers, subject to the judgment of this court, as in this bill elsewhere prayed, to assign to said defendant, as effectually as lawfully it may, such interest in the now existing contract with the Pennsylvania Railroad Company as defendant may legally be entitled to, or such interest therein as to this court may seem equitable; and to otherwise do and perform all things of your orator required in and by said lease of 1870, for the proper cancellation and termination thereof, and the surrender of the property and privileges demised thereby. But the offer so made was rejected by the defendant, as hereinafter stated. And your orator attaches to this bill a true copy of the resolution of its directors declaring said lease of 1870 terminated, and of the notice served upon said defendant in accordance therewith, and the answer of the defendant refusing to accept the same, and of the papers relating thereto, as Exhibit E, and prays reference thereto with like effect as if the same were herein fully set forth.

Your orator shows, however, that doubt has been suggested whether, by the legal effect of the acts hereinbefore recited, the right of election given to your orator in said section had
22 not already been exercised and the power executed by one

election, namely, to pay the defendant a share of the net revenue to be derived from the continued operation of the lease as aforesaid, and whether the said election was not binding upon your orator and the defendant, and fixed the rights and relations of the parties. That your orator is thereby much embarrassed, and submits to the court the legal construction of said lease and the legal effect of the acts of your orator, as well as of the defendant thereunder hereinbefore stated.

Your orator further shows that if it had the right to declare the said lease void, and to terminate the same, as by the resolutions and notices aforesaid it sought and now seeks to do, it is impossible for your orator, and has been made so impossible by the acts of the defendant acting in bad faith, to execute the right and power given by said "eighth" section according to the terms thereof; that your orator took the existing contract with the Pennsylvania Railroad Company in its present form and with its present conditions by the inducement as aforesaid of the defendant, and being led to do so by its assurances hereinbefore detailed; that your orator has thereby come under obligation to perform that contract of which it cannot divest itself, that the contract is not assignable, and said railroad company will not assent to its assignment or transfer; that your orator therefore can neither refuse to perform it nor transfer it to the defendant nor make it in any way an object of surrender to the defendant, according to the terms of said lease without the aid of this court to make some equitable disposition thereof; and said defendant should be equitably estopped and precluded from denying or obstructing the right of your orator to end said lease by reason of its inability to surrender to it said contract; and your orator is willing, if its right to end said lease remains as aforesaid, to yield to the defendant such interest in said contract as it lawfully may and as the defendant may be entitled to; or your orator is willing and offers to so use and do with said contract as to this court may seem just and as it may decree.

23 Your orator further shows that it is still further embarrassed in attempting to perform the literal conditions of said lease concerning the surrender of the demised property under your orator's election, made as *as* aforesaid, to annul said lease; that much of the said property was perishable and of a nature to be consumed or destroyed in the using; that the cars, by reason of their original construction, have become unfit to be used upon railways because they are superseded by cars of more modern and better construction, and will no longer be accepted by the railroad company for service upon its lines; and that their original construction was such that they cannot by any repairs or modifications be made to conform to the requirements of modern use on railroads; that the literal performance of the terms of said lease concerning the surrender of said demised property is impossible, and was so almost from the time of the execution of said lease; that said defendant claims and insists that it is impossible for your orator to make effective its election to annul said lease because it is unable to comply with the literal terms of the said lease in the matter of said sur-

render and the assignment and transfer to your orator of the existing contract with the Pennsylvania Railroad Company, but your orator insists that it was never contemplated in said lease that at its termination all the identical property therein mentioned should be returned; but that it is the plain intent thereof that compensation should be made for such property as in the lapse of time should from destruction by fire, collision or otherwise, cease to exist or otherwise become impossible of return, but for which your orator might be accountable under said lease unless satisfactory substitution should be made therefor.

That your orator has prepared a schedule of all the original cars to be by it surrendered under the terms of said lease, which are now in existence, and of all cars that have been substituted for any of said original demised cars which have been condemned and destroyed; and also has offered a fair money value for such of said original cars as have been destroyed, and in place of which no other cars have been substituted; and also a sufficient amount of money to put said original cars still in existence in the repair required by the terms of said lease of 1870, which schedule is hereto at-
24 tached as Exhibit F, and reference prayed thereto with like effect as if the same were herein set forth at length.

That your orator has tendered to said defendant all the cars and money enumerated and set forth in said schedule, in satisfaction of the surrender provided for by the terms of said lease of 1870, which cars and money said defendant has refused to receive; and your orator is unable to agree with said defendant as to what is required by the terms of said lease, and is compelled to pray the exercise of the chancery powers of this court to determine what is so required, and to take an accounting between the parties upon the termination of said agreement of lease, if your orator had the right to terminate it as aforesaid.

That your orator would have had all of said cars so tendered by it to defendant for surrender in good repair, as called for by said contract of 1870, so far as possible as aforesaid, and made preparations to place the same in such repair, but did not put them in such good repair on account of such negotiations by and conduct of the said defendant in urging and inducing your orator to continue to operate under the lease aforesaid and to make said new contract with the said Pennsylvania Railroad Company.

That by reference to said Exhibit F it will be seen that your orator tendered defendant 37 of said original cars, with the money necessary to put them in proper repair; that said 37 original cars are all of said original cars now in existence, so far as is known to your orator; that your orator tendered to said defendant 63 cars as ones substituted in the place of a like number of said originally demised cars; and your orator avers that the said 63 cars so tendered were from time to time, and as the business of operating sleeping cars by your orator required, substituted in place of a like number of the originally demised cars, and have ever since and up to the present time been used as such, and said substituted cars are now of greater value and in far better condition and repair than

were said originally demised cars when received by your orator, and cost on an average over $15,000 each. That your orator tendered to said defendant $57,000 in lieu of 19 of said originally
25 demised cars, which have been totally destroyed, and are not now in existence, and no other cars have been substituted in place thereof.

That your orator believes the said 37 originally demised cars shown on Exhibit F, as tendered by your orator to said defendant, even if repaired and put in as good condition as when first demised to your orator, would be unfit for use, and no railroad company would permit said cars to be run over its road as sleeping cars, and any expenditure of money on the same would be useless and would be a direct loss to said defendant; and that said cars, even if so repaired, would be unfit for use as sleeping cars on account of defects in the original construction of them; and the holders of a large amount of the stock of said defendant have concurred in this belief of your orator, and have asked that the said originally demised cars be not repaired but be surrendered in the condition in which they now are, together with sufficient money to represent such repair, as they believe it would be more advantageous for the defendant to receive such money than for such money to be expended on said old cars.

Your orator shows that only eighty-four of said originally demised cars were run upon said Pennsylvania railroad; that as said cars were taken off said railroad at the demand of said railroad company, and as they were taken off other railroads at the demand of said other railroad companies, your orator was unable to use said originally demised cars, even if the same were in good repair and running order, because no railroad company would permit the same to be run on their lines on account of faults in the original construction thereof; and more particularly did said Pennsylvania railroad refuse to allow, under any circumstances, said originally demised cars to run upon its lines, in however good repair they might be.

That about 150 sleeping cars are now required for the operation of the now existing contract with the Pennsylvania Railroad Company, an equitable interest in which contract, or such interest therein as the court may deem equitable, your orator has offered to assign to defendant as aforesaid. And your orator is willing and now offers to operate sleeping cars in conformity with the provisions of said contract with the Pennsylvania Railroad
26 Company, and pay over to said defendant such share of the net earnings arising from the operation of such contract as may be agreed upon, or as to this court shall seem just.

And your orator insists that, the premises considered, the said actions of defendant ought not in good conscience to enable it to collect rent from your orator at the rate of $264,000 per annum after January 27, 1885, and said defendant ought not to be allowed to profit by its said misleading actions and representations, but as your orator has now elected as aforesaid to declare said lease of 1870 null and void, such election by your orator so made on the first

day of July, A. D. 1886, ought, if lawful and made of right, to relate back and be held to take effect from the 27th day of January, A. D. 1885, when your orator would have declared said lease terminated and surrendered the demised property in accordance with the provisions of said lease, had it not been prevented therefrom by said misleading actions and inducements of defendant; or that in case it shall be deemed by the court that your orator is not entitled to have the exercise of its right to annul said lease relate back to and take effect from the said date, to wit, the 27th day of January, A. D. 1885, that then the amount of the net revenues referred to in the eighth paragraph of said lease and derived by your orator from the sources therein contemplated, may be ascertained for the period intervening between the said 27th day of January, 1885, and the 1st day of July, 1886, and that such proper proportion thereof as defendant might be reasonably entitled to under the agreements of said board of directors hereinbefore mentioned, taken in connection with said "eighth" section of said original lease, may be ascertained, and may be decreed to be paid to defendant by your orator in lieu of all other rental under said lease for the period above mentioned, which sum, when so ascertained, your orator hereby declares itself, in the event aforesaid of its right to annul the lease, willing and ready to pay as the court may direct.

Your orator avers that none of the original 119 cars are now running or being used upon the lines of the Pennsylvania
27 Railroad Company or other lines within the Pennsylvania Railroad Company contract.

That the present contract also provides for the exercise of an option by the Pennsylvania Railroad Company for an interest or part ownership in said cars, as is expressed in said contract and supplemental contract herein referred to.

Your orator further avers that if your orator is in any way prevented from carrying out said Pennsylvania Railroad Company contract, and if said cars of your orator are withdrawn from the Pennsylvania railroad, the traveling public will be incommoded and deprived of sleeping-car accommodations, and your orator may be held liable in a multitude of suits for damages growing out of contracts made by it for the transporting of passengers through various States on the lines of the Pennsylvania Railroad Company, and may also be liable to be held for heavy damages by the Pennsylvania Railroad Company for non-performance of said contract now existing between your orator and the Pennsylvania Railroad Company.

That your orator has made the offer of surrender and compensation, as above set forth, and said defendant, has, as aforesaid, refused to receive the same. That your orator is not now chargeable, with the care, preservation, insurance or guarding of said cars; that by reason of said tender, which ought now to be accepted, if your orator had the right to annul the lease as aforesaid, the bulk of the cars so tendered to defendant may be thrown upon some line of railroad or side tracks of the same, and will require shelter, care, guarding, preservation and insuring, all of which will entail heavy

cost and expenses; and in addition thereto a large portion of the cars and equipment so tendered are perishable, such as the furnishings of such cars, heating appartus, varnishing and upholstery, and said equipment is also liable to be stolen; and your orator insists that, the premises considered, a receiver ought to be appointed in this cause, to take charge of all the property so tendered, to insure, care for and preserve to the best of his ability all of said cars, to provide suitable storage for such of them as are not in a condition
28 to run, and to lease or otherwise employ as best he can, such of said cars as are in a condition to be operated, and otherwise to take such care of and make such disposition of said cars so tendered as this court may, from time to time, direct.

And your orator charges, as heretofore represented to this honorable court, that it is ready and willing to carry out, in order to prevent any inconvenience to the traveling public, the new contract with the Pennsylvania Railroad Company, hereinbefore referred to, upon such basis of payment of part of the net revenues of such business to defendant as the defendant would be equitably entitled to.

Your orator further shows that, by reason of the contract entered into with the Pennsylvania Railroad Company as herein stated, and the consequent embarrassment for the reasons given in transferring or assigning any interest in said contract, and in otherwise making literal and technical surrender of the demised property, your orator now has a right to claim and does claim the equitable interposition of this honorable court to assist and enable it to make what the court shall deem to be an effectual and complete surrender of the demised property under the "eighth" section of the original contract with the said defendant, if your orator is entitled to annul the lease as aforesaid, and invokes this court by such orders or decree as it may deem proper in the premises, to direct your orator as to the necessary form and manner of surrender of said demised property, so that there can be no complaint that it has not done and is not ready to do, in every particular, the fullest equity towards the defendant in relation to all its rights, legal or equitable, in the premises.

Your orator charges and insists that the position assumed by the defendant as against your orator is inequitable, for that the defendant claims and insists that your orator cannot make available the option and the right conferred upon it by the terms of said "eighth" section to annul the said lease in the event therein specified, because, for the reasons aforesaid, it cannot comply with the terms of said lease in the matter of surrender of the demised property; and that, on the other hand, the said defendant can
29 defeat your orator's alternative right of election given in said "eighth" section, to continue to operate said lease and pay said defendant a share of the net revenue thence derived, by refusing to agree with your orator upon the amount of the share to be so paid; and that, accordingly, until your orator can literally restore property which has been destroyed or consumed as the contract contemplated that it would be, and as was inherent in the nature

of the business to be transacted therewith, or until the said defendant shall consent to agree with your orator upon the amount to be paid under the second alternative, your orator must continue paying the said defendant the said sum of $264,000 per annum, though nothing approximate to that amount can by any possibility be earned under the lease. But your orator insists that such claim and insistence of the defendant is inequitable and unjust, and a scheme for extortion, and that even if the terms of said lease could be so wrested as to permit such a construction, such action of the defendant would be grossly oppressive and a fraud upon the spirit and intent of the parties in the said contract and as shown thereby.

And your orator shows that in said lease it is recited that the said contract of lease is made on the part of the defendant, the said Central Transportation Company, under an act of the General Assembly of the Commonwealth of Pennsylvania therein named, approved the 9th day of February, A. D. 1870, a copy whereof is hereto attached, marked Exhibit G, and referred to as a part of this bill; but your orator is advised, and therefore submits it to the court, that the said lease being a grant, assignment and transfer of all the property, contracts and rights of the said defendant, The Central Transportation Company, and including a covenant on the part of said defendant corporation not to transact during the existence of said lease any of the business for the transaction of which it was incorporated, was never legally valid between the parties thereto, but was void for the want of authority and corporate power on the part of the defendant to make the said contract of lease, and because the same was in violation of the charter conferring the corporate powers of said defendant, and of the purpose of its incorporation, as by the said charter, to which, for greater certainty, reference is made, your orator is advised it will appear; that the said contract of lease was never susceptible of being enforced in law by your orator against said defendant, and cannot therefore be construed and held to continue in force and obligatory upon your orator; and that your orator can be under no other legal obligation or equitable duty to the defendant than to return such of the property assumed to be demised as is capable of being returned, and to make just compensation for such other of the said property as under the said contract of lease it ought to make compensation for, which it is willing and now offers to do.

And your orator here avers that if it be held and considered that said contract of lease was legal and obligatory upon the parties to it, and if your orator's first election was invalid or ineffective as aforesaid, and if your orator was at liberty to exercise its option and right to annul the said lease, it is ready and now offers to pay any money the court may consider that it ought to pay on account of repairs, or compensation for cars, or for any other matter connected with the surrender provided for in said original lease; and further offers to pay into court on account thereof and subject to the order of the court, such sum or sums of money as the court may direct; and here offers to do equity in the premises and to stand to,

perform and abide all things that shall be equitable and to your honors shall seem meet in the premises.

All of which actings and doings of the defendant are contrary to equity and good conscience; and inasmuch as your orator is remediless in the premises, at common law, and relievable only in equity, where matters of this nature are cognizable.

To the end, therefore, that the said defendant, The Central Transportation Company, may full and perfect answer make to all and singular the premises (but not under oath, answer under oath being expressly waived), and that as particularly as if the said defendant were particularly interrogated thereto; and that the court may construe the said contract of lease, and especially the said "eighth" section thereof; and that a decree may be made declaring the
31 interpretation and meaning thereof, and the legal effect of the acts thereunder herein stated, and that due effect may be given thereto, according to the several and respective rights of the parties hereto; and particularly that it may be decreed whether the right was thereby given to your orator absolutely to elect in the event therein specified either to annul the said lease or to pay to the defendant a share of the net revenue to be derived from the continued operation thereof.

And more specifically that it may be decreed whether your orator should be held to have elected to pay to the said defendant a share of the net revenue so derived, instead of annulling said lease; and whether, in that event, said election was, by the terms of said lease, conclusive and binding upon both parties thereto; and whether the said defendant acquiesced in and consented to said election, and was conclusively bound by said acquiescence and consent; and whether said defendant ought not to be held to be equitably estopped to deny the said election and its acquiescence therein, and to be bound thereby; and whether, by reason of said election, and also by reason of the assent thereto and acquiescence therein of the defendant, the obligation of your orator to pay the rental originally reserved in said lease of $264,000 per annum was not put an end to forever; and whether the powers of the board of directors of said defendant company were not sufficient to bind the said defendant company in the matters aforesaid; and that the said defendant may be enjoined from bringing or prosecuting any further suit against your orator under said lease, based upon a claim of rent from your orator, at the rate of $264,000 per annum.

And, in case it shall be considered that the acts of the parties and the agreements hereinbefore stated, do not constitute in legal effect an election by your orator, conclusive on both parties, to pay to the said defendant a share of the net revenue arising from the operation of said lease, that your orator may be held to have been entitled to exercise its option to annul said lease under the provisions of said "eighth" section; and that its action in that regard to that end, hereinbefore stated, may be held to have been valid and effectual; and that this court will lend its aid to your orator in
32 making the surrender of demised property to the defendant and relieve your orator from the embarrassments set forth in

this bill; and that the court will declare by its decree the rights of the defendants, if any, in the said contract with the Pennsylvania Railroad Company, and make such disposition thereof as may be equitable; and that it may be held that your orator is not bound or holden to more than just compensation to the defendant for such of the demised property as cannot be actually restored or in literal compliance with the terms of said lease; and that your orator may be held under no obligation to continue to perform the terms of said lease and to pay the rental of $264,000 per annum, therein originally reserved; and that the court may consider and decree whether said contract of lease was not made without authority of law on the part of the defendant, and in excess of its corporate powers, and in violation of its corporate duties, so as not to be enforcible against your orator beyond the obligation of your orator to make return of or just compensation for the property demised; and that an account may be taken between your orator and the defendant, and that the amount may be ascertained that should be paid by your orator to the defendant on any account whatever; and that, pending this suit, and until the rights of said defendant and your orator shall be ascertained and declared by a decree, a receiver may be appointed in this cause to take possession of the cars or other property offered to be surrendered or turned over to the defendant, as aforesaid, and to insure, shelter, care for, and use the same as the court may direct, and to hold the same, and any revenue derived therefrom, subject to the order of the court; and that the court may decree whether the cars originally demised to your orator by said lease dated in 1870, and now in existence and in bad order, shall be repaired by your orator, or whether your orator shall pay to the defendant the money required to repair them; and that the amount thereof may be ascertained; and whether the sixty-three cars substituted in use by your orator, as in this bill stated, may be substituted in surrender for cars of defendant that have become worthless and been destroyed,

and also what compensation shall be made for the nineteen
33 cars in this bill mentioned which became worthless and were destroyed, and in place of which no cars have been substituted and that any amount that may be received by defendant in said judgment, already recovered, on the law side of this court upon the covenants of said lease of 1870, may be taken into account and charged against defendant in the general accounting prayed for herein; and that should the aforesaid offer of surrender of property by your orator to defendant, be held not to be in strict compliance with the provisions of the contract of lease dated February 17, 1870, as that lease in some of its provisions is disputed as to the intent of the parties, the court may construe said lease, and direct and adjudge as to how said surrender shall be made and carried out, or what compensation shall be made in lieu of surrender where surrender has become impracticable or impossible as in this bill set forth; and that an accounting may be had between your orator and defendant as to all the matters and things set out in this bill; and that the defendant may be injoined as hereinbefore prayed, and that your

orator may have such other, further or different relief as the nature of the case may require and to your honor as may seem meet.

May it please your honors to grant unto your orator not only the writ of injunction as hereinbefore prayed, but also a writ of subpœna directing and commanding the said defendant, The Central Transportation Company, to be and appear before this honorable court upon a day, and under a penalty therein to be limited, and then and there full answer to make to all and singular the premises, and further to stand to, perform and abide such order and decree herein as shall to the court seem meet.

And your orator will ever pray, &c.

SAMUEL DICKSON,
Solicitor for Complainant.

O. A. LOCHRANE.
EDWARD S. ISHAM.
JOSEPH H. CHOATE,
JOHN C. BULLITT,
ALFRED ENNIS, *Of Counsel.*

34 EXHIBIT A.

This indenture, made this seventeenth day of February, A. D. one thousand eight hundred and seventy, between the Central Transportation Company, a corporation of the Commonwealth of Pennsylvania, having their place of business in the city of Philadelphia, of the first part, and Pullman's Palace Car Company, a corporation of the State of Illinois, having their place of business in the city of Chicago, of the second part.

Whereas, the parties hereto are engaged in the business of manufacturing railway cars, generally knows as sleeping cars, under certain patents belonging to them respectively, and of hiring the same to railroad companies under written contracts, to be used and employed on and over the lines of the roads of said railroad companies, and receiving therefor income and revenue by the sale to passengers of the berths and accommodations therein; and

Whereas, the demands of the public for increased means of personal comfort and convenience in traveling, of avoiding repeated changes of cars over long routes of railroad, the necessity of affording, at fair and reasonable rates, these advantages, which cannot be extended by the railroad companies themselves, require that every possible means should be adopted to meet such demands, by avoiding the inconvenience and curtailing the expenses incidental to the maintenance of the business management and organization of two separate corporations; and

Whereas, it is proposed that the party of the first part (having authority so to do under an act of the General Assembly of the Commonwealth of Pennsylvania, entitled "An act to extend the charter of the Central Transportation Company, to empower them to lease their property and increase their capital stock, and approved the ninth day of February, one thousand eight hundred and seventy, and duly accepted), shall demise, transfer, and set over unto the

party of the second part, their successors and assigns, all their cars, contracts, and patent rights and personal property, and that the second party (having authority so to do under the said act
35 of assembly, and by virtue of the powers in them vested by their act of incorporation from the State of Illinois) should take the same; and

Whereas, at a meeting of the directors of the first party, held at Philadelphia on the eleventh day of February, one thousand eight hundred and seventy; and at a meeting of the directors of the second party, held at Chicago, on the sixteenth day of February, one thousand eight hundred and seventy, this present form of contract by and between the parties hereto was submitted for their approval, and the same being by them at said meetings approved, the respective presidents were authorized for, and as the act and deed of, the said parties of the first and second parts, duly to execute and deliver the same:

Now this contract witnesseth, that the party of the first part, for and in consideration of the money, covenants, and agreements hereinafter mentioned and contained on the part of the second party, their successors and assigns, to be paid, kept, and performed, hath granted, demised, transferred and set over, and by these presents do grant, demise, transfer and set over unto the second party, their successors and assigns, and the second party take:

Item 1. All and singular one hundred and nineteen railway sleeping cars, furniture, bed clothing, and apparel thereunto belonging or appertaining.

Item 2. All and singular their rights, interests, and claims of, in, and to sixteen contracts (copies of each whereof are hereto attached and made part hereof, and numbered respectively No. 1, 2, 3, etc.), entered into by and between the party of the first part and the several railroad companies, parties respectively thereto, for and in respect to the use and employment of said cars on and over the respective lines of said railroad companies.

Item 3. All and singular their right, title, and claim of, in and to seventeen patent rights, secured by letters patent (an assignment whereof is hereto attached and made part hereof, and numbered "A"), as fully and entirely as the first party are, or may be, entitled to the same, and to any renewal or extension thereof.

36 Item 4. And generally all their personal property, rights, credits, moneys and effects, rights of action, moneys due and to become due from licenses heretofore granted;

To have and to hold the above-demised property and all income, revenue, and profit to be derived therefrom, to the party of the second part, their successors and assigns, as follows:

Item 1. The said one hundred and nineteen cars, furniture, bedding, bed clothing, and apparel, for and during the term of ninety-nine years, from the first day of January, A. D. one thousand eight hundred and seventy, to be fully completed and ended.

Item 2. Each of the said contracts for and during the full term of the duration of each thereof respectively.

Item 3. Each of the said patent rights for the full end and term

of the duration of the letters patent therefor respectively, and for the full end and term of any renewal or extension of the same respectively.

Item 4. All the said personal property, rights, credits, moneys, and effects, rights of action, moneys due and to become due from licenses heretofore granted, for and during the said term of ninety-nine years, from the first day of January, A. D. one thousand eight hundred and seventy, or during the existence of said licenses, or of any renewal or extension thereof, all and every of which shall be taken subject to all debts and pecuniary liabilities of the first party up to the said first day of January, one thousand eight hundred and seventy, as set forth in Exhibit B.

In consideration whereof, the party of the second part covenants with the party of the first part as follows:

First. That they shall and will pay to the said first party, their successors and assigns, annually, the sum of two hundred and sixty-four thousand dollars ($264,000) in lawful money of the United States, during the entire term of ninety-nine years as aforesaid; the same to be paid to the treasurer, or other authorized officer,
37 at their principal place of business, or office of said first party, in quarter-yearly installments of sixty-six thousand dollars ($66,000), the first quarter's payment to be made on the first day of April, one thousand eight hundred and seventy; and shall and will pay all debts and pecuniary liabilities of the first party, due and owing by them, up to the first day of January, A. D. one thousand eight hundred and seventy, as set out in Exhibit B.

Second. That they shall and will, so long as the said assigned contracts exist, and for the period of any new or other contract with the said railroad companies, or either of them, or their successors and assigns, of like general character, in good faith continue and carry on the business as authorized by their charter.

Third. That they shall and will, during the said term of ninety-nine years, keep or cause to be kept in good order and repair, or renewed and reconstructed as often as may be needful, the said one hundred and nineteen cars, and the furniture, bedding, bed clothing, and apparel thereof.

Fourth. That in the event of the failure or omission of said second party, their successors or assigns, to pay any of the said quarterly payments for the period of thirty days after the same shall be due and payable, then, and in such case, this contract may, at the option of the party of the first part, be declared null and void, and it shall and may be lawful for them, or for any person or persons, or corporation or corporations, selected by them, either with or without any process or writs for such purpose, to take possession of and again to hold the said one hundred and nineteen cars hereby demised, or as the same may be renewed or reconstructed, as aforesaid, wherever the same may be found, with their furniture, bedding, bed clothing and apparel, and in such case the second party covenant and agree to deliver possession of said cars to such
38 person or persons, or corporation or coporations so selected, and to assign and transfer to the said first party the said con-

tracts or any new contracts with the said railroad companies for and in respect to the use and employment of sleeping cars over the lines of railroads, and any unexpired patent right, or renewal or extension of the same, hereinbefore assigned and transferred, and shall and will cease to operate and employ, or cause to be operated rr employed, any cars whatsoever on or over the said lines of railroads.

It being understood that such action on the part of the first party, in the said event, shall not release or discharge the second party, their successors or assigns, from liability from damage and loss which may be sustained by said first party owing to any such breach of contract or default.

Fifth. That they will not assign or transfer this contract without the consent, in writing, of the party of the first part, nor make or create any debt, lien, or mortgage upon the property hereby demised, which can or shall in any manner take precedence of the rights of the first party under this contract, or in anywise to deprive the party of the first part from their right to claim and take said property under the terms hereof. And the said parties hereto further covenant and agree with each other as follows:

Sixth. That the parties hereto shall and will, at all proper times and manner, exert their influence to obtain renewals or new contracts with said railroad companies, for and in respect to the use and employment of the cars of the second party, on and over their lines of railroads, in carrying on their said business, and the first party shall and will not engage in the business of manufacturing, using or hiring sleeping cars, while this contract remains in full force and effect.

Seventh. That such renewal or new contract may be made
39 in the name of the party of the second part, their successors and assigns, but in the event of the termination of this contract under any of the clauses hereof, the same shall be thereupon assigned and transferred unto the party of the first part.

Eighth. In the event that any of the railroad companies mentioned in the assigned contract shall at any time during this agreement refuse to permit the cars of the second party to be run on and over their respective lines of roads, so that by reason of such prevention or refusal the profits, income, revenue derived from and under any other and remaining contracts with other and remaining railroad companies mentioned in the assigned contracts, shall fall below the sum of two hundred and sixty-four thousand dollars ($264,000) then and in that event said second party shall have the right either to declare this contract null and void, and surrender to said first party the said hereinbefore-demised property, or shall and will pay in like manner, in lieu of the said sum of two hundred and sixty-four thousand dollars ($264,000), such sum or share of the net revenues from the remaining lines of roads as the parties hereto may at that time agree upon.

Ninth. And the party of the second part covenant and agree with the party of the first part, that on the expiration of the said term of ninety-nine years, they will redeliver to said first party the said one

hundred and nineteen cars, furniture, bedding, bed clothing, and apparel in like good order as the same now are, with such additions, betterments, and improvements as shall be made thereto, or in renewal or substitution thereof, together with any unexpired contracts between said second party and any of the railroad companies mentioned in the assigned contracts, for and in respect to the use and employment of said cars on and over their lines of railroad.

In witness whereof, the said parties hereto have caused
40 their respective corporate seals to be hereto affixed, and the same to be attested by the signatures of their respective presidents and secretaries the day and year first above written.

O. W. CHILDS, *President.* [L. S.]

Witnesses:
G. C. FRANCISCUS.
J. EARNEST GOODMAN.

Attest: J. F. COTTRINGER, *Secretary.*
GEO. M. PULLMAN, *President.* [L. S.]

Witnesses:
WIRT DEXTER.
W. F. WHITEHOUSE.

Attest: CHAS. W. ANGELL, *Secretary.*

EXHIBIT B.

This indenture, made this twenty-seventh day of January, in year of our Lord one thousand eight hundred and seventy (1870), between the Pennsylvania Railroad Company, a corporation of the Commonwealth of Pennsylvania, of the first part, and Pullman's Palace Car Company, a corporation of the State of Illinois, of the second part:

Whereas, the said party of the second part is now engaged in the business of manufacturing railway cars, known as drawing-room cars and sleeping cars, under certain patents belonging to them, and of hiring the same to railroad companies under written contracts for a term of years, to be used and employed on and over the lines of the roads of said railroad companies, and receiving therefor income and revenue by the sale to passengers of seats, berths
41 and accommodations therein, the said contracts being principally with railroads running west from Chicago; and

Whereas, the said second party has recently acquired the entire equipment, property and patents of the Central Transportation Company, a company heretofore operating sleeping cars on the road of the first party and its connecting lines; and

Whereas, the said first party is desirous of availing itself of the use on and over its said lines of road, of the cars constructed under the sleeping and drawing-room car patents, now the property of the second party, and also of connections by means of said cars with other lines of railroads whereon said cars are now operated by said second party;

Now, this contract witnesseth:

First. That the said party of the second part, in consideration of the covenants and agreements hereinafter mentioned on the part of the first party, to be by them kept and performed, hereby agrees with the said party of the first part, that they will furnish drawing-room cars and sleeping cars, to be used by said first party for the transportation of passengers, sufficient in the judgment of the president of said first party to meet the requirements of travel on and over their line of railroad, and on and over all lines of railroad which they now control, or may hereafter control, by ownership, lease, or otherwise. The said cars so furnished to be in part the cars now on the lines of said first party, and heretofore the property of the Central Transportation Company, which cars are to be put in first-class condition by the respective parties hereto, under the provisions of this contract and in addition thereto, new cars sufficient to meet the demands of travel, such additional cars to be equal in elegance and comfort to the cars operated on any line of railroad by said second party, and said new cars are to be put on the lines of said first party as fast as they can be constructed, in sufficient number to equip all first-class through trains, and shall furnish every other facility for the comfort of passengers being trans-
42 ported over the said lines of railroad as may at any time be furnished by it for any other lines of road upon which its cars may be run, all such new cars and other facilities to be subject to the inspection and approval of the general superintendent of the said first party.

Second. The said party of the second part hereby agrees that they will keep the carpets, upholstery and bedding of each of the said cars in good order and repair, and renew and improve the same when necessary at their own expense, excepting repairs and renewals made necessary by accident or casualty happening to said cars while running upon the road of said first parties. It being understood that the said first party shall repair all damages to said cars of every kind occasioned by accident or casualty.

Third. The said party of the second part hereby agrees, at their own cost and expense, to furnish one or more employés, as may be needful upon each of said cars, whose business it shall be to collect fare for the accommodations furnished in said cars, and generally to wait upon passengers therein, and provide for their comfort.

Fourth. The said party of the first part hereby agrees that the general officers of said second party, and the employés named in article third of this agreement shall be entitled to free tickets over the lines of the first party when they are on duty for the said second party.

Fifth. It is hereby mutually agreed, that the said employés of the second party named in article third of this agreement shall be governed by and subject to the rules and regulations of the said first party, which are or may be adopted from time to time for the government of its own employés; and in the event of any liability arising against said first party, for personal injury, death, or otherwise, of an employé of said second party it is hereby distinctly un-

derstood and agreed that the said first party shall only be
43 liable to the same extent they would be if the party injured was an employé in fact of said first party, and for all liability in excess thereof, shall be indemnified and paid by said second party.

Sixth. The said party of the first part, in consideration of the use of the aforesaid cars, hereby agrees to haul the same on the passenger trains on their own line of road, and on all roads which they now control, or may hereafter control, by ownership, lease, or otherwise, and also on all passenger trains which they may by virtue of contracts, or running arrangements with other roads, have the right to use such cars and facilities in such manner as will best accommodate passengers desiring the use of said cars. And the said party of the first part shall, at their own expense, furnish fuel for the cars and materials for the lights, and shall wash and cleanse said cars, and shall also keep said cars in good running order and repair, including renewals of worn-out parts and all things appertaining to said cars necessary to keep them in first-class condition, except such as are provided for in article second of this agreement.

Seventh. The party of the first part agrees to furnish to second party at convenient points, room and conveniences for airing and storing bedding.

Eighth. The said party of the first part further agrees that the said party of the second part shall be entitled to collect from each and every person occupying said cars, such sums for said occupancy as may be usual on competing lines furnishing equal accommodations, and that such rules and regulations shall be mutually agreed upon as will most favor the renting of seats and couches in said cars.

Ninth. The party of the first part hereby agrees to permit the party of the second part to place their tickets for seats and couches for sale in such of the railroad ticket offices as may be mutually agreed upon, and such service shall be performed by and as a part of the general duties of the ticket agents and without charge
44 to the party of the second part, proceeds of said sales to be at the risk of said second party.

Tenth. The said party of the first part hereby agrees that said second party shall have the exclusive right, for a term of fifteen years from the date hereof, to furnish for use of the first party, drawing-room cars and sleeping cars, including reclining-chair cars, on all the passenger trains of said first party and over the entire line of railroad, and on all roads which they control, or may hereafter control, by ownership, lease or otherwise, and also on all passenger trains which they may, by virtue of contracts or running arrangements with other roads, have the right to use such cars and facilities, and that they will not contract with any other parties to run said class of cars on and over said lines of road during said period of fifteen years.

Eleventh. The said second party, for the consideration aforesaid, hereby guarantees said first party against all damages, of whatsoever kind, which may be by said first party incurred in consequence

of any infringement of any patent rights in the construction and use of drawing-room cars or sleeping cars or cars with reclining seats, which may be used by said second party upon the lines of said first party under this agreement; and the said second party hereby covenants and agrees, to and with said first party, to pay all costs and charges of defending all suits which may be hereinafter brought against said first party, on account of any alleged infringement of patent rights for the construction or use of cars which may have been used by said second party during the term of this contract, and that they will pay off and discharge any judgments which may be obtained because of any such infringement of patent rights, as aforesaid, it being the meaning and intent of this article that the said second party shall secure said first party against all manner of expenditures which may be incurred by said first party in consequence of any litigation connected with alleged infringements of patent rights, for the interior arrangements of said cars, and that they will pay off and discharge all judgments obtained at any time against said first party on account of such infringements.

Twelfth. It is mutually agreed between the parties hereto, that in case the said party of the second part shall at any time hereafter fail to keep and perform any of the covenants herein contained, or shall fail to keep in good and cleanly condition the upholstery and bedding of said sleeping cars, then and in that case the said party of the first part shall give to the said party of the second part due and timely notice to perform said duties, and shall require of said party of the second part to make good such deficiency; and if, after such notice the said second party shall fail within a reasonable time to make good such deficiency, then in that case the said first part shall have the option to declare this contract ended and no longer in force.

In witness whereof, the party of the first part caused its corporate seal to be attached hereto, attested by the president and secretary, and the party of the second part hath caused its corporate seal to be attached hereto, in like manner attested by its president and secretary.

Dated the day and year first before written.

(Signed) J. EDGAR THOMPSON,
Pres't Penn. R. R. Co.
JOS. LESLEY, *Sec'y.*

Attest:

GEO. M. PULLMAN,
Pres't Pullman Palace Car Co.
CHAS. W. ANGELL, *Sec'y.*

EXHIBIT C.

On motion of Mr. Wright, seconded by Mr. Howard, the following was offered:

Whereas, the contract between the Pullman's Palace Car Co. and the Pennsylvania Railroad Co. expired January 27th, 1885; and

Whereas, by the provisions of the lease between the Pullman's Palace Car Co. and the Central Transportation Co., it now becomes necessary to modify the rental to be paid thereunder; and

Whereas, long and repeated interviews have been had between the representatives of the Central Co. and the Pullman's Car Co., in reference to the amount of such rental, based on the contract that the latter company could make with the Pennsylvania Railroad Co.; and

Whereas, from an examination of the provisions of such proposed contract with the Pennsylvania Railroad Co., it appears that the share of the profits which this company will be entitled to receive therefrom fall- much below that received by it under the preceding contract which has expired, and by reason of the right of termination at short periods reserved to the Pennsylvania Railroad Co. in such proposed contract, and profits or rental to this company will be subject to the contingencies thereof; and it further appears that upon such determination this company will be left with its cars and equipment unemployed without lines of railroad upon which it can operate the same, whereby such property will be largely depreciated in value, resulting in permanent loss to this company; and

Whereas, in view of the premises, it appears to the board to be for the best interest of the stockholders of this company that the offer of the Pullman's Company to pay an annual rental of $66,000 (or three per cent.), with the privilege to each stockholder to exchange his or her stock for the stock of the Pullman's Palace
47 Company, upon the basis of four shares of transportation stock for one share of Pullman's Company stock, be accepted, and

Whereas, at the annual meeting of the stockholders of this company, held April 21, 1884, it was "resolved that the board of directors be, and they are, hereby authorized to make a modification of the existing lease with the Pullman's Palace Car Company, if, in their judgment, modifications or changes may be deemed necessary, and to submit their action in that behalf to the stockholders for their approval;" therefore,

Resolved, That, in the judgment of this board, it has become necessary to modify the existing lease with the Pullman's Palace Company, and this board does hereby agree to a modification of the same, by a reduction of the rental to be paid by the Pullman's Palace Car Company, to an annual rental of three per cent. upon the capital stock of this company, or $66,000 per annum, payable quarterly, with the privilege to each stockholder to exchange his or her stock for the stock of the Pullman's Palace Car Company, at the rate of four shares of transportation stock for one share of Pullman's Palace Car Company stock, the exchange to be made on or before the 17th day of April, 1885. Also,

Resolved, That the president and secretary be, and they are, hereby authorized to execute on behalf of this company the agreement of modification in accordance with the foregoing resolution.

in the form prepared by counsel and now submitted to this board; also,

Resolved, That a meeting of the stockholders be called to be held on the 18th of March, 1885, at eleven o'clock, a. m., to whom shall be submitted the action of this board for their approval, and

Resolved, That the president and secretary are hereby instructed to advertise the call for said meeting, according to law.

48 The question upon above preambles and resolutions was put, and they so ordered, but *as* the form of agreement not being quite perfected, the board adjourned to meet at same place on Friday, 27th inst., at 3 o'clock, p. m.

J. F. COTTRINGER, *Secretary.*

On Friday, the 27th of February, 1885:

An adjourned meeting of the board of directors was held at 719, Walnut street.

Present: John C. Bingham, W. F. Lockard, Josiah Kisterbock, W. J. Howard, W. S. Lane, Samuel McClary, Jr., John A. Wright.

The agreement between the Pullman's Palace Car Company and the Central Transportation Company for a modification of the rental, as drawn up by counsel and ordered by the board of directors, at meeting of 26th, was read as follows:

* * * * * * *

This agreement, made the twenty-seventh day of February, 1885, by and between the Central Transportation Company, hereinafter called the transportation company, and Pullman Palace Car Company, hereinafter called the Pullman Company, witnesseth:

Whereas, the transportation company did heretofore, by indenture bearing date the 17th day of February, 1870, lease unto the Pullman Company certain railway cars to the number of 119, with the furniture, bedding and apparel thereunto belonging, and did also therein and thereby assign and transfer to the said Pullman Company sixteen certain contracts of various terms of life with railroad companies, as therein mentioned, for the operation of said sleeping cars over and upon their several lines of railroad, a copy of which indenture of lease is hereto attached, and to which reference is made;

And whereas, in said lease it was, amongst other things, provided as follows, to wit:

49 "Eighth. In the event that any of the railroad companies mentioned in any of the assigned contracts shall, at any time during this agreement, refuse to permit the cars of the second party to be run on and over their respective lines of road, so that by reason of such prevention or refusal, the profits, income and revenues derived from and under any other and remaining contracts with other and remaining railroad companies mentioned in the assigned contracts, shall fall below the sum of two hundred and sixty-four thousand dollars; then and in that event, said second party shall have the right either to declare this contract null and void, and surrender to said first party the said hereinbefore-demised property, or shall and will pay in like manner in lieu of said

two hundred and sixty-four thousand dollars, such sum or share of the net revenues from the remaining lines of road, as the parties hereto may at that time agree upon."

And whereas, certain of the railroad companies mentioned in the assigned contracts have refused to permit the cars above mentioned to run over their respective roads, leaving certain of the Pennsylvania lines, so called, substantially the only remaining lines of railroad mentioned in said assigned contracts, and upon which lines such Pullman Company has been and is operating a portion of the cars originally demised to it, as aforesaid, or cars substituted therefor, under a contract with the Pennsylvania Railroad Company, dated the — day of ——, and which expired on the 27th day of January, 1885.

And whereas, in consequence of the expiration of its contract with the Pennsylvania Railroad Company aforesaid, the Pullman Company, pursuant to its covenants in said lease in that regard, and with the approbation of the transportation company, and its influence exerted as far as practicable, has been negotiating a new contract for the operation of sleeping cars over and upon the lines of railroad owned and controlled by said railroad company, a copy of which contract is hereto attached and made part of this agreement;

50 And whereas, the income and revenue to be derived from and under such proposed contract, applicable to the payment of rentals to the transportation company under the lease aforesaid, will fall much below the sum of two hundred and sixty-four thousand dollars, and said contract, among other things, contains provisions for its termination upon the happening of certain events, at the option of the railroad company, or at the option of the Pullman Company, as well as for the purchase by the railroad company of the cars and equipment embraced therein, in whole or in part, and for the reduction of sleeping-car rates and the revenues to be derived therefrom by the Pullman Company, upon conditions therein specified;

And whereas, it has become necessary that the lease aforesaid should be modified, in respect to the rentals to be paid the transportation company, and otherwise, as herein provided, and for that purpose the board of directors of said company did authorize the execution of this agreement;

And whereas, the capital stock of said transportation company consists of forty-four thousand shares, of the par value of fifty dollars each, representing at the date hereof, the absolute ownership, free and unincumbered, of the cars and equipment above mentioned, together with a surplus fund invested in United States bonds to the value of six hundred and sixty thousand dollars, or thereabouts, under a certain deed of trust dated — day ——, —.

Now, in consideration of the premises, the parties do agree as follows:

First. The Pullman Company shall and will pay the transportation company the annual rental of three per cent. upon its capital stock, the same being equivalent to the sum of sixty-six thousand

dollars, in equal quarterly installments, together with twenty-
51 five per cent. of the taxes to be paid by the said transportation company to the State of Pennsylvania in lieu and in stead of the sum of two hundred and sixty-four thousand dollars aforesaid, with the option to each shareholder of said transportation company to exchange his or her stock for the stock of the Pullman Palace Car Company at the rate of four shares of transportation for one share of Pullman stock, provided such exchange be made on or before the 17th day of April, 1885.

Second. In case and as often as the Pennsylvania Railroad Company shall purchase an interest in the cars and equipment embraced in said proposed contract, after the expiration of five years from this date, or in case and as often as the rates and revenues derived by the Pullman Company shall be reduced under the provisions thereof, at any time, the annual rental herein provided shall be readjusted by the parties proportionately; and failing agreement thereon, such a new rental shall be fixed by three appraisers, one of whom shall be selected by each of the parties, and the third shall be chosen by the two so selected. The decision of the majority of them shall be binding and conclusive upon the parties.

Third. Upon the termination of said proposed contract, from any cause, the Pullman Company will surrender to the transportation company all the cars and equipment in said lease demised, and as therein provided, or the said company will surrender such portion thereof as shall not have been purchased by the Pennsylvania Railroad Company under the provisions of said contract, and will account for and pay over to the transportation company all proceeds of the cars and equipment of said company so purchased.

Fourth. This agreement shall take effect as of the 27th day of January, 1885.

52 In witness whereof, the parties have caused to be set hereto their corporate seals, duly attested, and the signatures of their respective officers hereto duly authorized.

THE CENTRAL TRANSPORTATION COMPANY,
By JOHN C. BINGHAM, *President.*

Attest: J. F. COTTRINGER, *Sec'y.*

PULLMAN'S PALACE CAR COMPANY,
By GEO. M. PULLMAN, *President.*

Attest: A. S. WEINSHEIMER, *Secretary.*

A vote was then taken on approval or disapproval of foregoing agreement. The result was:

Yeas.	*Nays.*
Howard.	McClary, Jr.
Wright.	Lockard.
Lane.	
Kisterbock.	
Bingham.	

After which Mr. Lockard asked Mr. McClary to make the vote unanimous, which was done, and the agreement was unanimously approved of.

On motion, the board adjourned.

53 EXHIBIT D.

Ridgway and Clearfield railroad.
Susquehanna and Clearfield railroad.
North and West Branch railway.
Southwest Pennsylvania railroad.
Elmira and Williamsport railroad.
Chemung railroad.
Elmira, Jefferson and Canandaigua railroad.
Sodus Bay and Southern railroad.
Union railroad.
Philadelphia and Trenton railroad.
Connecting railway.
Junction railroad.
Philadelphia and Long Branch railroad.
New York and Long Branch railroad.
West Jersey railroad, branches and leased lines.
West Jersey and Atlantic railroad.
Camden and Atlantic railroad.
Delaware railroad and leased lines.
Philadelphia and Baltimore Central railroad.
Baltimore and Potomac railroad.
Alexandria and Washington railroad.
Alexandria and Fredericksburg railway.
Cumberland Valley railroad.
Allegheny Valley railroad.
Erie and Pittsburgh railroad.
Ashtabula and Pittsburgh railway.
New Brighton and New Castle railroad.
Northwestern Ohio railway.
Alliance, Niles and Ashtabula railroad.
Cincinnati and Muskingum Valley railroad.
Pittsburgh, Wheeling and Kentucky railroad.
Indianapolis and Vincennes railroad.
Grand Rapids and Indiana railroad and branches.

54 EXHIBIT E.

CHICAGO, *June 28th*, 1886.

To the Central Transportation Company, Philadelphia, Penna.

GENTLEMEN: Pullman's Palace Car Company herewith transmits to you a copy of a resolution of its board of directors, terminating the lease made from you to it, dated February 17th, 1870, and there will be delivered to you by counsel for this company, who present this communication, a schedule of cars and money which this com-

pany now tenders you in satisfaction of the surrender provided for by it to you in section eight of said lease. These cars and money are now at your disposal, and as the cars are very bulky and scattered in location, and as no place of tender or surrender is provided for in said lease, said counsel for this company will confer with you as to the time and place at which the actual possession can be given you. This company is also ready to do any and all other acts, and to execute and deliver any instruments in writing which, under the terms of said lease you may be entitled to receive in order to make a complete and effectual surrender, and our said counsel are authorized to confer with you as to what may be required, and to prepare the necessary papers for execution.

Yours truly, PULLMAN'S CAR COMPANY,
By GEO. M. PULLMAN, *President.*

Whereas, certain of the railroad companies mentioned in the contracts assigned to the Pullman's Palace Car Company by the contract of lease between the Central Transportation Company and Pullman's Palace Car Company, dated February seventeenth, A. D. 1870, have refused to permit said Pullman's Palace Car Company to run its cars on and over their respective lines of railroad,
55 and by reason of such refusal the profits, income and revenue derived from the other and remaining contracts with the other and remaining railroad companies mentioned in said contract, have fallen below the sum of two hundred and sixty-four thousand dollars per annum; and

Whereas, it is provided in said lease that in such event Pullman's Palace Car Company shall have the right to declare said lease null and void, and to surrender to said Central Transportation Company the property demised in and by said lease.

Therefore, be it

Resolved, That this company does hereby declare said contract of lease between said Central Transportation — and this company, null and void, and hereby wholly terminated, and elects to and hereby directs the surrender to said Central Transportation Company of the property demised in and by said lease.

Resolved, further, That the president of this company is hereby authorized to sign and cause to be served, all notices necessary to carry out and effectuate these resolutions, and to decide upon, direct and cause to be made the surrender of said demised property, and to take all other steps and legal proceedings, including the surrender or assignment of any contract or contracts, or any interest therein, that may be necessary in the premises.

(Signed) A. S. WEINSHEIMER, *Secretary.*

STATE OF ILLINOIS, }
County of Cook, } ss:

I, A. S. Weinsheimer, secretary of Pullman's Palace Car Company, do hereby certify that the above and foregoing is a true copy of the preamble and resolutions adopted at a meeting of the board

of directors of said company, duly called and held at its general offices in Chicago, Illinois, on the 28th day of June, A. D. 1886.

Witness my hand and seal of said company, this June 28th, A. D. 1886.

(Signed) A. S. WEINSHEIMER, *Secretary.*

56 EXHIBIT F.

To the Central Transportation Company.

GENTLEMEN: The following is the property Pullman Palace Car Company tenders you in connection with the resolutions of its board of directors and the letter of its president handed you herewith:

1st. Thirty-seven of said original demised cars, now stored at Altoona and elsewhere, being cars numbered 13, 14, 22, 23, 30, 35, 38, 39, 40, 42, 57, 65, 71, 82, 86, 87, 88, 89, 91, 93, 94, 95, 96, 97, 98, 100, 106, 107, 108, 109, 110, 111, 112, 113, 114, 117, and 119.

2d. The following cars, being cars numbered 122, 125, 126, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138. 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 169, 180, 184, 185, 186, 189, 252, 253, 261, 262, 264, 266, 267, 268, 269, 289, 290, 291, 292, 315, and cars named Paoli, Arabian, Bolivia, Etna, Richmond, Peru, S8, Garden City, Queen City, Panama, Indiana, Planet, Belrose, Bellvue, Caspian, Corsican, Chataqua, Monticelo, Chili, all of which cars were by Pullman's Palace Car Company in due course of business, substituted in place of the following original demised cars, to wit: 1, 75, 76, 72, 85, 77, 78, 47, 58, 4, 25, 10, 7, 49, 50, 17, 19, 20, 21, 34, 41, 56, 102, 18, 92, 105, 24, 68, 3, 59, 80, 66, 5, 6, 51, 11, 12; 27, 8, 52, 69, 73, 74. 15, 90, 48, 2, 67, 115, 70, 55, 43, 44, 29, 9, 79, 16, 32, 99, 118, 81, 60, 104.

3d. The original demised cars, numbered 26, 28, 31, 33, 36, 37, 45, 46, 53, 54, 61, 62, 63, 64, 83, 84, 101, 103, and 116, were destroyed and not replaced, and Pullman's Palace Car Company tenders $57,000 in lieu thereof, as being a fair value thereof.

4th. Said original demised cars first above enumerated are not in good repair. A careful estimate made of the amount required to put them in repair makes the amount so required $53,000, and that amount is now tendered to you.

57 EXHIBIT G.

An act to extend the charter of the Central Transportation Company, to empower them to lease their property and increase their capital stock.

SECTION 1. Be it enacted by the senate and house of representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same, That the charter of the Central Transportation Company, incorporated under the act of assembly entitled "An act to encourage manufacturing operations in this Commonwealth," approved April seventh, one

thousand eight hundred and forty-nine, and the supplements thereto, be and the same is hereby extended for ninety-nine years from the expiration of its present charter; and said company are hereby empowered to enter into contracts with corporations of this or any other State for the leasing or hiring and transfer to them, or any of them, of their railway cars and other personal property; and shall have power to increase their present capital stock two hundred thousand dollars.

BUTLER B. STRANG,
Speaker of the House of Representatives.
CHARLES H. STINSON,
Speaker of the Senate.

Approved the ninth day of February, anno Domini one thousand eight hundred and seventy.

JOHN W. GEARY.

58 EXHIBIT H TO ORIGINAL BILL OF COMPLAINT.

Agreement made this twenty-sixth day of January, A. D. 1885, between the Pennsylvania Railroad Company, hereinafter called the railroad company, of the one part, and Pullman's Palace Car Company, hereinafter called the Pullman Company, of the other part.

Whereas, the said Pullman Company's sleeping and drawing-room cars have been operated and are at this date being operated over the railroads of the said railroad company under an agreement which expires on the twenty seventh day of January, one thousand eight hundred and eighty-five; and also as stated by said Pullman Company, it has its said cars in operation over other railroads to the extent of an aggregate distance of about seventy thousand miles, including the roads of said railroad company;

And whereas, said Pullman Company represents itself as having in its ownership about one thousand sleeping cars properly equipped, thus enabling it to meet both the regular and exceptional demands of railroads contracting with it, and as having existing contracts with an average unexpired life of over nine years, with companies, including said railroad company, to the number of seventy-two which roads embrace in large part portions of routes of public travel connecting with and in extension of the roads operated and controlled by the said railroad company;

59 And whereas, it is believed that the continuance of the use of the sleeping cars of said Pullman Company on the roads of said railroad company, upon satisfactory terms, for a reasonable length of time, would be of mutual advantage to the parties hereto, and to the traveling public:

Now this agreement witnesseth: That the parties hereto, in consideration of the covenants to be performed by each do agree as follows:

First. That the Pullman Company, in consideration of the cove-

nants and agreements of the railroad company, hereinafter mentioned, to be by it kept and performed, hereby agrees with the railroad company that it will, upon the written request, and not otherwise, of the railroad company's general manager, or such officer as he may designate, furnish and assign, during the period of fifteen years from this date, unless this agreement is sooner terminated under the terms hereof, sleeping cars, free of cost or charge to the railroad company, except as hereinafter stated, to be used by the railroad company for the transportation of passengers on and over all the railroads described in a schedule hereto attached, marked "A" to an extent sufficient to fully meet the requirements of travel thereon.

The Pullman Company agrees that one hundred cars, to wit, those enumerated on a schedule hereto attached, marked "B," shall be immediately assigned to and delivered upon the roads of
60 the railroad company, for use under the terms of this agreement, and, from time to time hereafter, such additional cars as may be needed to meet the ordinary requirements of travel shall be assigned and delivered, when and as the same may be requested in writing by the general manager of said railroad company, all of which cars shall be subject, as to design, construction, equipment, and condition, to the approval of the said general manager. Should the requirements of trade necessitate the use at any time of a less number of cars than may be delivered under this agreement, the cars not required may be withdrawn by the mutual consent of the parties hereto.

The Pullman Company also agrees to furnish, upon the terms and conditions of this agreement, such other cars for temporary use as may be reasonably required to meet special demands of travel from time to time.

Second. The Pullman Company hereby agrees that it will, at its own proper cost and expense, maintain, and keep in thorough repair all cars furnished under this agreement, and the entire equipment thereof, including *inter alia*, carpets, upholstery, bedding and toilet articles, and pay all taxes and assessments thereon, and will, from time to time, at its own expense make such improvements therein, and substitute new and improved cars for old ones, as may be necessary to keep the said cars and equipments in use up to
61 the average standard of the best and most approved sleeping cars run on any railroad or system of railroads in the United States upon which fifty or more sleeping cars are used, and also repair all damages to said cars caused by accident or casualty originating inside of said cars, and also from acts or omissions of its own employés upon said cars, and from fire resulting from the heating or lighting arrangements thereof; but that the railroad company shall repair all damages to said cars from accident or casualty, when the same shall originate outside of said cars, except from acts or omissions of the employees of the Pullman Company, as hereinbefore provided.

And the railroad company hereby agrees that it will, at all times, when requested by the Pullman Company, promptly make such

temporary repairs on said cars as may, from time to time, be necessary, and the railroad company may, without request, make such repairs as in its judgment may be necessary to insure the safety of the outside of the body and running gear and connections of said cars, rendering bill therefor monthly, and charging for same only the actual cost of material and labor expended on such repairs, with the addition of ten per cent. to cover supervision, general expenses and the employment of fixed capital.

And the railroad company hereby agrees that it will, at its own expense, clean and lubricate said cars, furnish water, ice, fuel, and material for lights, and will, as often as necessary, renew and
62 replace links and pins, bell-cords and air couplings, without charge to the Pullman Company.

Third. The railroad company, as proper compensation for the maintenance of the running gear and bodies of said cars, as provided in the preceding article, hereby agrees to pay to the Pullman Company, monthly, mileage at the rate of three cents per mile for each mile run by said cars under the terms of this contract over the railroads embraced in the first article hereof, unless such cars shall hereafter have an average gross earning of seventy-five hundred dollars ($7,500), or more, per car per annum, in which event nothing shall be paid.

Fourth. The Pullman Company hereby agrees that it will at the request of the railroad company furnish sleeping cars under the terms of this agreement to run upon any connecting railroads with which the railroad company may wish to co-operate in forming sleeping-car lines, and in all such cases the railroad company shall be responsible for and pay to the Pullman Company mileage, at the rate of three cents per car per mile run, upon other railroads than the railroads and branches of the railroad company, when said cars are run at the written request of the railroad company, unless such cars shall make an average gross earning of seventy-five hundred dollars ($7,500) or more per car per annum. The said railroad company, however, shall have the right to demand and
63 recover, for its own use, in the name of the said Pullman Company, but without cost to said Pullman Company, from such connecting railroads from time to time the amounts which may be properly chargeable to them for such mileage. It being agreed, however, that no responsibility or liability or any kind shall rest upon the railroad company by reason of the running of such cars over railroads with which the Pullman Company shall then have contracts, so long as said contracts shall remain in force.

Fifth. The Pullman Company hereby agrees, at its own cost and expense, to furnish one or more employés, as may be needful, upon each of said cars, whose duty shall be to collect fares for the accom--odations furnished in said cars, and generally to wait upon passengers therein, and provide for their comfort. Such employés shall be governed by and subject to the rules and regulations of the railroad company, which are or may be adopted from time to time for the government of its own employés, and also while on duty be subject to the discipline of such of the railroad company's officers

and employés as may be designated by its general manager. Upon the written request of the said general manager for the removal of any employé, assigning the cause therefor, such employé shall be discharged from the service of the Pullman Company upon the roads of the railroad company. But in the event of any
64 liability arising against the railroad company for personal injury, death, or otherwise, of any employé of the Pullman Company, it is hereby distinctly understood and agreed that the said railroad company shall be indemnified in reference thereto and the same paid by the Pullman Company.

Sixth. The railroad company hereby agrees that such general and division officers of the Pullman Company as may be indicated in writing by that company, shall be furnished with free passes over the railroads of the railroad company when on duty connected with this agreement. The employés mentioned in article 5 of this agreement shall be entitled to free passage in the cars upon which they are on duty, and shall be furnished with free passes over said railroads when otherwise on duty connected with this agreement.

Seventh. The Pullman Company hereby agrees that such general and division officers of the railroad company as shall be designated by the general manager of the railroad company in writing to the Pullman Company shall be entitled to free passage in any of the cars furnished by the Pullman Company and running on the roads of the railroad company under this agreement.

Eighth. It is hereby agreed that said cars shall be hauled by said railroad company on its passenger trains in such manner as in the judgment of the general manager of the railroad company
65 will best accommodate passengers desiring the use of said cars, and that said company, through its general manager, shall determine on what trains such cars shall be run.

The railroad company will haul over the roads named in the schedule hereto attached, without charge to the Pullman Company, the cars furnished under this agreement, to and from repair shops, and such other points as in the judgment of the general manager may be necessary for the purposes of this agreement.

Ninth. The railroad company agrees to furnish the Pullman Company, without charge, at suitable points at which the railroad company may have facilities, reasonable space and conveniences for airing and storing bedding in use.

Tenth. The railroad company further agrees that the Pullman Company shall be entitled to collect from each passenger occupying said cars such sums for said occupancy as may be usual, and such sums shall in no case be greater than those charged on a competing line furnishing like accommodations, unless permitted in writing by said railroad company, nor shall the rates be reduced to meet competition unless by permission in writing of said railroad company; and a schedule of the rates existing at the date of this agreement shall be attached
66 hereto, and marked "C." The Pullman Company agrees to furnish its tickets for seats and couches for sale in such of the railway offices and stations as may be designated

by the railroad company. Where the ticket agents of the railroad company sell seats and couches for the Pullman Company it shall be without charge to the Pullman Company, but such agents while so acting shall be regarded as agents of said Pullman Company; proceeds of such sales and neglect of agents, and accidents in respect to the same, shall be at the risk of the Pullman Company. Such rules and regulations shall govern the renting and use of seats and couches in said cars as shall be to the mutual interest of the parties hereto; and the railroad company reserves the right to require that no more than one double berth shall be sold for each first-class railroad ticket which a passenger may hold

Eleventh. That in all cases in which the railroad company may desire to co-operate with other railway companies in forming through lines of sleeping cars, the Pullman Company agrees that sleeping cars not owned by it may be run over the roads of the railroad company, when necessary to secure such co-operation. But in all such cases it is agreed, that the Pullman Company shall have the right to furnish its *pro rata* of sleeping cars based upon the mileage of the railroad company in said lines; and in all sleeping cars operated in such through lines the Pullman Company shall be entitled to
67 receive all local sleeping-car fares for berths and seats upon the roads of the railroad company, and its *pro rata* of through fares based upon the number of cars furnished by it in said through lines. And it is in like manner agreed that any party holding the right, by contract or otherwise, to operate sleeping cars upon the road of any particular railway company forming a portion of the through lines hereinbefore referred to, shall be entitled to receive all local sleeping-car fares for berths and seats upon the road of such particular railway company, and its *pro rata* of through fares in all of the sleeping cars operated in said through lines.

Twelfth. The Pullman Company hereby agrees to pay and indemnify the railroad company for and against all damages of whatsoever kind, which may be recovered against or sustained by the railroad company in consequence of negligence or improper acts of the Pullman Company or done or suffered by their employés while in the line of their employment to the said cars or persons therein; and the said Pullman Company will pay off and discharge all necessary expenditures in litigation, and all judgments resulting from such negligence or improper acts.

And said Pullman Company also agrees to indemnify the said railroad company against all damage of whatsoever kind which
68 may be sustained by the said railroad company, in consequence of any infringement of patent rights in the construction and use of any of said cars which may be used by the Pullman Company upon the roads of the railroad company under this agreement; the meaning and intent being that the Pullman Company shall secure the railroad company against all manner of reasonable expenditures which may be incurred by it in consequence of any litigation connected with alleged infringements of patent rights for the interior arrangements of said cars and for the exterior when not furnished by said railroad company as hereinafter provided;

and that the Pullman Company will pay off and discharge all such expenditures and all judgments obtained at any time against the railroad company on account of such infringements.

The said railroad company shall give notice to said Pullman Company of any such suits as are referred to in this article, and said Pullman Company shall be entitled to take part in their defence, if deemed by it desirable, for the protection of its interests. The right to use patents for running gear, platforms, brakes, and connections is to be furnished by the railroad company, whenever said articles are specially ordered to conform to the standard of the railroad company, and said Pullman Company has no authority to use the same.

69 Thirteenth. It is mutually agreed between the parties hereto that, in case the railroad company shall fail to cleanse or either of the parties fail to repair or renew said cars, according to the conditions of this agreement, then and in that case, after written notice shall have been given to the defaulting party by the other of the default complained of, and the defaulting party shall neglect or refuse so to cleanse, repair, or renew said cars within a reasonable time after such notice, the other party shall have the right to cleanse and make, or cause to be made, all necessary repairs and renewals to said cars, and such defaulting party shall pay to the other party the cost of the same.

Fourteenth. It is distinctly understood that this agreement relates alone to sleeping cars, and is not meant to include parlor cars or cars other than sleeping cars by whatsoever name they may be known, and the railroad company, in so far as it lawfully can, hereby agrees that it will not itself operate or permit the operation of sleeping cars other than those of the Pullman Company on and over the railroads embraced in this agreement, during the continuance of the same, except as provided in the eleventh article of this agreement.

70 Fifteenth. It is mutually agreed between the parties hereto that the railroad company shall have the option to purchase from time to time an undivided interest, not exceeding in the aggregate three-fourths (¾), in all the cars and equipments furnished under this agreement, and not previously withdrawn by mutual consent, except only in the cars and equipments furnished for temporary use to meet special demands of travel, and such as are furnished for use upon connecting roads under the fourth article hereof.

Upon payment of the purchase price of such undivided interest, when ascertained as hereinafter provided, the railroad company shall become a joint owner with the Pullman Company in said cars and equipments to the extent of the interest so purchased, and thereafter shall share proportionately with the Pullman Company the gains and losses arising from the business of operating said cars and equipment under this agreement.

Such options shall be exercised by the railroad company, and written notice thereof given the Pullman Company, within ten years from the date this agreement takes effect.

Upon notification by the railroad company from time to
71 time of its desire to exercise the option aforesaid, the said cars and equipment shall be forthwith appraised by the then general manager of the railroad company and the then general superintendent of the Pullman Company, and in case they cannot agree they shall thereupon appoint a third person to act with them, and the decision of a majority of the three fixing such valuation shall be final and binding upon the parties. Should either of said parties refuse, after thirty days' notice by the other, to confer with the proper designated officer of the other party as above, or fail, after conferring, to complete the appraisement with due diligence and in good faith, then in such case the above-designated officer of the other party shall himself proceed to name an appraiser to act on the part of the defaulting company in the same manner and to the like effect as though the proper officer of said defaulting party had acted. In determining such value, the appraisement shall be based upon the actual value of the cars and equipment at the time, and no allowance shall be made for good will. Upon the determination of such value, the railroad company shall pay a proportion thereof, corresponding with the undivided interest it has notified the Pullman Company of its desire at such time to purchase.

It is hereby mutually agreed that, upon its becoming a
72 joint owner as aforesaid, the railroad company and the Pullman Company shall have an equal voice in the management and control of said cars, the appointment of all employés connected therewith, and over all expenses attendant upon the maintenance of the same that the cars shall be run under the general organization of the Pullman Company, and in accordance with the provisions of this agreement, and in such a manner as will promote the mutual interests of the parties hereto. Such expenses as may be properly chargeable against the gross earnings of the same shall be deducted therefrom, and the railroad company thereafter shall share with the Pullman Company the profits and losses arising from the business of operating said cars hereunder in proportion to their interests in said cars.

Should the railroad company become joint owners in said cars and equipment under this article, then if this agreement shall continue for fifteen (15) years, all of said cars and equipment shall at the end of that time be distributed between the parties in the proportion of their respective joint ownership, and failing agreement thereon, the same shall be sold, and the proceeds divided between them in the like proportion; but

If this agreement shall be sooner terminated by the railroad company, then such of said cars and equipment as are not required to be purchased by the railroad company upon such sooner ter-
73 mination under the sixteenth article hereof, shall be distributed, or sold and the proceeds of sale divided between the parties in the proportion of their respective joint ownership therein.

Sixteenth. This agreement shall take effect January 27th, 1885, and continue for the term of fifteen years thereafter, subject to the right of the railroad company to terminate the same on the first

day of January, 1890, or on the first day of January of any third year thereafter during said term, by giving notice in writing, to the Pullman Company of its intention to do so, at least eighteen months before the day on which it may elect, as above stated, to have this agreement end: Provided, that in case this agreement is terminated prior to the expiration of fifteen years, at the election of the railroad company, by notice aforesaid, and not by reason of any default of the Pullman Company, then and in that case the railroad company shall purchase and the Pullman Company shall sell such portion of the cars with their equipment furnished under this agreement, and not previously withdrawn, (except only the cars and equipment furnished for temporary use to meet special demands of travel, and such as are furnished for use upon connecting roads under the fourth article hereof,) as is hereinafter set forth, or such interest in said portion as the railroad company may not have previously
74 acquired hereunder, that is to say, should this agreement be so terminated on the 1st of January, 1890, the railroad company shall purchase from the Pullman Company fifty per cent. in number of the same, should it be terminated January 1st, 1893, forty per cent. in number of the same, should it be terminated January 1st, 1896, thirty per cent. in number of the same, and should it be terminated January 1st, 1899, twenty per cent. in number of the same, said cars so purchased to be, as to condition, of the average of the Pullman cars then on said railroad company's roads. Said cars shall be so sold and purchased at the actual cash value of the same, which value, as well as the particular cars to be so purchased and sold, shall, in default of agreement, be fixed by appraisal in the manner provided in the next preceding article; and upon such purchase, the railroad company shall have the right to use the said cars and all things connected therewith without charge for patent rights used on said cars, which may be owned or controlled by the Pullman Company. But said railroad company shall have the right at the time of any such termination, if it so desires, to purchase all the cars and equipment of the Pullman Company then upon its lines, or such interest therein as it may not have previously acquired under this agreement, at a valuation to be fixed as
75 hereinbefore set forth, provided such option be declared at the time of giving the eighteen months' notice of termination as aforesaid.

Seventeenth. It is understood that where the term general manager is used in connection with the railroad company or the term general superintendent in connection with the Pullman Company, the intent of the agreement is that the duties to be performed by them respectively shall, in the event of a change of title or other cause making it impracticable for such officer to act, be performed by the officer discharging his duties, or such officer as may be designated respectively by the president of either company.

Eighteenth. In case question as to the proper construction of any of the provisions herein contained, or difference as to any act or duty claimed to be involved in the performance hereof, shall arise, if the same cannot be amicably adjusted by and between the

parties, it shall be submitted to referees to be chosen in the manner following. The party demanding the reference shall serve upon the other party a notice of such demand, stating the question upon which it demands the judgment of the referees, and the name of one referee by it chosen. The party so notified shall, within ten
76 days after receiving such notice, select a second referee, and notify the other party thereof in writing; or if he shall fail to select a referee, the referee selected by the party demanding the reference shall select the second referree. The referrees so selected shall within a reasonable time meet and select a third referree, and fix a time and place for hearing the parties, of which they shall be notified in writing. If any referee shall fail or refuse to act, the party by whom he was chosen shall select another to act in his place. The award of any two of said referees, made after hearing the party or parties who have attended in compliance with the notice required to be given, as above stated, shall be final and binding on the parties, and they severally hereby expressly agree to be bound thereby.

In witness whereof, the railroad company hath caused its corporate seal to be attached hereto, attested by the president and secretary, and the Pullman Company hath caused its corporate seal to be attached hereto, in like manner attested by its president and secretary.

Dated the day and year first above written.

THE PENNSYLVANIA RAILROAD COMPANY,
By G. B. ROBERTS, *President.*

[P. R. R. Co. Seal.]

Attest: JNO. C. SIMS, *Secretary.*

PULLMAN PALACE CAR COMPANY,
By GEO. M. PULLMAN, *President.*

[P. P. C. Co. Seal.]

Attest: A. S. WEINSHEIMER, *Secretary.*

77 A.

Schedule of Railroads.

Lines east of Pittsburgh and Erie.

Pennsylvania railroad, branches and leased lines.
Philadelphia and Erie railroad and branches.
Ridgway and Clearfield railroad.
Susquehanna and Clearfield railroad.
North and West Branch railway.
Southwest Pennsylvania railroad.
Northern Central railway, branches and leased lines.
Elmira and Williamsport railroad.
Chemung railroad.
Elmira, Jefferson and Canandaigua railroad.

Sodus Bay and Southern railroad.
Union railroad.
United New Jersey Railroad and Canal Company, branches and leased lines.
Philadelphia and Trenton railroad.
Connecting railway.
Junction railroad.
Philadelphia and Long Branch railroad.
New York and Long Branch railroad.
West Jersey railroad, branches and leased lines.
West Jersey and Atlantic railroad.
Camden and Atlantic railroad.
Philadelphia, Wilmington and Baltimore railroad, branches and leased lines.
Delaware railroad and leased lines.
Philadelphia and Baltimore Central railroad.
Baltimore and Potomac railroad.
Alexandria and Washington railroad.
Alexandria and Fredericksburg railway.
Cumberland Valley railroad.
*Allegheny Valley railroad.

78 Lines west of Pittsburgh and Erie.

Pittsburgh, Fort Wayne and Chicago railway, branches and leased lines.
Erie and Pittsburgh railroad.
Cleveland and Pittsburgh railroad.
Ashtabula and Pittsburgh railway.
New Brighton and New Castle railroad.
Northwestern Ohio railway.
Alliance, Niles and Ashtabula railroad.
Pittsburgh, Cincinnati and St. Louis railway, branches and leased lines.
Little Miami railroad and branches.
Cincinnati and Muskingum Valley railroad.
Pittsburgh, Wheeling and Kentucky railroad.
Chicago, St. Louis and Pittsburgh railroad.
Jeffersonville, Madison and Indianapolis railroad and branches.
Indianapolis and Vincennes railroad.
*Grand Rapids and Indiana railroad and branches.
*Cincinnati, Richmond and Fort Wayne railroad.
*St. Louis, Vandalia and Terre Haute railroad.

*These lines are to be covered by the terms of this agreement in the event of the Pennsylvania Railroad Company assuming direct control of the same, and after the termination of any existing contracts between them and the Pullman Company.

79 *Schedule B of Cars.*

Year built.	Number.	Name.	Berths.	Style.	Remarks.
1870	120	Lammermoor		O. P.	
1870	121	Melrose		"	
1870	145	Ionia	24	S. D. R.	
3 cars.					3 cars of 1870 build.
1872	142	Brocton	24	S. D. R.	
1872	181	Bristol	24	"	
1872	252	Bradford	24	"	
1872	253	Urbana	24	"	
1872	258	Versailles	24	O. P.	
1872	259	Quantico		"	
1872	261	Tropic	24	S. D. R.	
1872	262	Transic	24	"	
1872	263	Monitor	24	"	
1872	264	Englewood	24	"	
1872	268	Arcola	24	"	
1872	282	Seneca	24	"	
1872		Lowell		"	
1872		Champlain		"	
14 cars					14 cars of 1872 build.
1873	187	Paris	24	S. D. R.	
1873	265	Wanatah	24	"	
1873	266	Lima	24	"	
1873	267	Forrest	24	"	
1873	272	Elmira	24	"	
1873	273	Marion	24	"	
1873	275	Bryn Mawr	24	"	
1873	277	Williamsport	24	"	
1873	278	Sunbury	24	"	
1873	279	Gallitzin	24	"	
1873	281	Monmouth	24	"	
1873	283	Hanover	24	"	
1873	286	Johnstown	24	"	
1873	288	Conewago	24	"	
1873	289	Beverly	24	"	
1873	290	Milford	24	"	
1873	291	La Crosse	24	"	
1873	293	Lock Haven	24	"	
1873	294	Bordentown	24	"	
1873	297	Monongahela	24	"	
20 cars					20 cars of 1873 build.
1874	183	Allegheny	24	S. D. R.	
1874	315	Malvern		"	
2 cars.					2 cars of 1874 build.
80					
1875	269	Valpariso	24	S. D. R.	
1875	274	Coshocton	24	"	
2 cars.					2 cars of 1875 build.

Schedule B of Cars—Continued.

Year built.	Number.	Name.	Berths.	Style.	Remarks.
1876	276	Kinkora	24	O. P.	
1876	330	Viceroy	24	Hotel.	
1876	331	Marlborough	24	"	
1876	332	Windsor	24	"	
1876	333	Buckingham	24	Hotel.	
1876	334	Rossmore	24	"	
1876	335	President	24	"	
1876	.....	New England	.....	O. P.	
1876	.....	New Hampshire	.....	"	
1876	.....	Maine	.....	"	
1876	.....	Connecticut	.....	"	
1876	.....	Rhode Island			
12 cars	.....	.....	.....	.....	12 cars of 1876 build.
1877	.....	St. Nicholas	.....	Hotel.	1 car of 1877 build.
1878	319	Brevoort	20	"	1 car of 1878 build.
1880	337	Oberon	28	S. D. R.	
1880	336	Standard	28	"	
1880	338	Orion	28	"	
1880	340	Titania	28	"	
1880	341	Thalia	28	"	
1880	342	Hesperia	28	"	
1880	.....	Celtic	.....	Hotel.	
7 cars.	.....	.....	.....	.....	7 cars of 1880 build.
1881	343	Paragon	28	S. D. R.	
1881	344	Criterion	28	"	
1881	345	Magenta	28	"	
3 cars.	.....	.....	.....	.....	3 cars of 1881 build.
1882	351	Servia	28	S. D. R.	
1882	353	Thracia	28	"	
1882	354	Alsatia	28	"	
1882	355	Egeria	28	"	
1882	356	Etruria	28	"	
1882	357	Dalmatia	28	"	
1882	358	Dacia	28	"	
1882	359	Andalusia	28	"	
1882	360	Corinthia	28	"	
1882	362	Ossian	.....	O. P.	
10 cars	.....	.....	.....	.....	10 cars of 1882 build.
81					
1883	392	Malaga	24	B. O. P.	Buffet.
1883	.....	Bavaria	28	S. D. R.	
1883	361	Tasso	.....	O. P.	
1883	389	Andes	24	B. O. P.	Buffet.
1883	390	Amazon	24	"	"
1883	383	Volga	24	B. D. R.	"
6 cars.	.....	.....	.....	.....	6 cars of 1883 build.
1884	404	Barcelona	28	B. D. R.	Buffet.
1884	405	Demarara	28	"	"

Schedule B of Cars—Continued.

Year built.	Number.	Name.	Berths.	Style.	Remarks.
1884	406	Dominica	28	B. D. R.	Buffet.
1884	407	Aurania	28	"	"
1884	411	Medway	24	"	"
1884	420	Biscay	24	"	"
1884	421	Hebron	24	"	"
1884	422	Bosporus	24	"	"
1884	423	Caucasus	24	"	"
1884	424	Coanza	24	"	"
1884	425	Mersey	24	"	"
1884	426	Orebro	24	"	"
1884	427	Nogoya	24	"	"
1884	428	Nocturne	24	"	"
1884	429	Thessaly	24	"	"
1884	430	Solway	24	"	"
1884	.....	Aragon	24	"	"
1884	.....	Oneonta	28	S. D. R.	
1884	339	Calypso	28	"	
19 cars	.....	.....	.....	.....	19 cars of 1884 build.

82 *Summary.*

3	cars	that	were	built	in	the	year 1870.
14	"	"	"	"	"	"	1872.
20	"	"	"	"	"	"	1873.
2	"	"	"	"	"	"	1874.
2	"	"	"	"	"	"	1875.
12	"	"	"	"	"	"	1876.
1	"	"	"	"	"	"	1877.
1	"	"	"	"	"	"	1878.
7	"	"	"	"	"	"	1880.
3	"	"	"	"	"	"	1881.
10	"	"	"	"	"	"	1882.
6	"	"	"	"	"	"	1883.
19	"	"	"	"	"	"	1884.
100	cars.						

		Chicago.	Ft. Wayne.	Crestline.	Alliance.	St. Louis.	Terre Haute.	Indianapolis.	Bradford June.	Xenia.	Columbus.	Logansport.	Louisville.	Cincinnati.	Cleveland.	Toledo.	Rochester.	Canandaigua.	Buffalo.	Elmira.	Williamsport.	Pittsburgh.	Altoona.	Erie.	Emporium.	Renovo.	Harrisburg.	Cape Charles.	Delmar.	Philadelphia.	Baltimore.	Washington.
New York	D. berth ...	5.00	4.00	3.50	3.00	6.00	5.50	5.00	4.50	3.50	3.50	5.00	5.00	4.00	3.00	.....	.....	.....	.....	.....	.....	2.50	2.00	.....	.....	.....	2.00	2.00	2.00	1.50	2.00	2.00
Philadelphia	D. berth ...	5.00	4.00	3.50	3.00	6.00	5.50	5.00	4.50	3.50	3.50	5.00	5.00	4.00	3.00	.. ...	2.00	2.00	2.00	2.00	2.00	2.00	2.00	2.00	2.00	2.00	1.50	2.00	2.00	.....	2.00	2.00
Baltimore	D. berth ...	5.00	4.00	3.50	3.00	5.00	5.00	4.50	4.00	3.00	3.00	.....	4.00	3.00	.....	.....	2.50	2.50	2 50	2.00	2.00	2.00	2.00	.....	2.00	2.00	1.50	.....	.....	2.00	.....	.....
Washington	D. berth ...	5.00	4.00	3.50	3.00	5.00	5.00	4.50	4.00	3.00	3.00	.....	4.00	3.00	.....	.....	2.50	2.50	2.50	2.00	2.00	2.00	2.00	.....	2.00	2.00	2.00	.....	.....	2.00	.....	.....
Harrisburg	D. berth ...	4.00	3.50	2.50	2.00	5.00	5.00	4.00	4.00	2.50	2.50	4.00	4.00	3.00	2.50	.....	2.00	2.00	2.00	2.00	1.50	2.00	1.50	2.00	2.00	.....	.....	.....	.....	.....	.....	.....
Altoona	D. berth ...	3.50	3.00	2.00	2 00	4.50	4.00	3.50	3.00	2.00	2.00	3.50	3.50	2.50	2.00	....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	...
Pittsburgh	D. berth ...	2.50	2.00	1.50	1.50	3.50	3.00	2.50	2.00	2.00	2.00	2.50	2.50	2.00	1.50	2.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Cincinnati	D. berth ...	2.00	.....	.....	.....	2.00	1.50	1.50	.....	.....	.....	1.50	.....	.....	2.00	....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Columbus	D. berth ...	2.00	.....	.....	.....	2.50	2.00	2.00	2.00	.....	.....	1.50	2.00	1.50	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Indianapolis	D. berth ...	.....	.....	.....	.....	2.00	.....	.....	.....	.....	.....	.....	2.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....

C.C.C. 51

84 Supplementary agreement, made and concluded this twenty-seventh day of January, A. D. one thousand eight hundred and eighty-five (1885), between the Pennsylvania Railroad Company, hereinafter called the railroad company, of the one part, and Pullman's Palace Car Company, hereinafter called the Pullman Company, of the other part.

Whereas, in a certain agreement made and executed by the parties hereto under date 26th of January A. D. 1885, it is provided in the third article thereof as follows:

"Third. The railroad company, as proper compensation for the maintenance of the running gear and bodies of said cars, as provided in the preceding article, hereby agrees to pay to the Pullman Company, monthly, mileage at the rate of three cents per mile for each mile run by said cars under the terms of this contract, over the lines of railway embraced in the first article hereof, unless such cars shall hereafter have an average gross earning of seventy-five hundred dollars ($7,500), or more, per car per annum, in which event nothing shall be paid."

85 And whereas, it is believed by the parties, and the same is assumed without further accounting, that all of the cars to be so operated under said agreement except those on the lines hereinafter stated, will earn an average of seventy-five hundred dollars ($7.500) per car per annum.

And whereas, certain other matters in connection with the subject of said agreement have been agreed upon and are deemed proper to be evidenced by written agreement:

Now this agreement witnesseth, that the said parties hereto, in consideration of the premises and of the sum of one dollar by each to the other in hand paid, receipt whereof is hereby acknowledged, and their mutual covenants hereinafter set forth, do covenant and agree as follows:

First. That the third article of said agreement hereinbefore recited, shall be held to be abrogated and of no effect as to all of the cars assigned or to be assigned, furnished or to be furnished, under the provisions of said agreement dated 26th of January A. D. 1885, except only the cars upon the following sleeping-car lines, namely:

1. The line between Philadelphia and Williamsport.
2. The line between Pittsburgh and Toledo.

86 3. The line between Pittsburgh and Indianapolis via Dayton.

Second. If, by reason of competition under the provisions of said agreement, the now existing rates of the Pullman Company shall be reduced twelve and a half per cent., or more, and in consequence of such reduction the cars upon the sleeping-car lines on which it shall be made shall not make an average gross earning of forty-five hundred dollars ($4,500) per car per annum, then the railroad company, during the continuance of such reduction arising as aforesaid, shall, in consideration of their use under the provisions of said agreement, pay to said Pullman Company two cents per car per mile run, or so much thereof as may be necessary to increase the

average gross earnings of said cars to forty-five hundred dollars ($4,500) per car per annum. But if through any other cause beyond the control of the Pullman Company, the said rates shall be reduced twelve and a half per cent. or more, and in consequence of such reduction the cars upon the sleeping-car lines on which it shall be made shall not earn an average as aforesaid of $4,500 per car per annum, then the railroad company during the continuance of such reduction arising as aforesaid, may at its option pay the two cents per car per mile as aforesaid; but if it declines to pay the
87 same, then the Pullman Company shall have the right on eighteen months' written notice to terminate said contract. But in such event, should the railroad company have become joint owner in any of said cars and equipment under the terms of said agreement, then said cars and equipment shall be divided between the parties in proportion to their respective interests, and failing agreement thereon, the same shall be sold and the proceeds thereof divided in the like proportion.

Third. Should any arrangement be made between the railroad company and competing lines under which, with the consent of the Pullman Company the charges for sleeping-car accommodation on the cars operated under said agreement are increased twelve and a half per cent. or more above those now existing, the railroad company shall have this increase, and the same shall be collected by the Pullman Company and paid to the railroad company in gross, monthly.

Fourth. The train conductors of the railroad company shall have the right to use vacant seats in said Pullman cars for the accommodation of passengers who cannot be provided for in regular
88 coaches of the railroad company, but such use shall not interfere with the making up and use of sleeping berths on said cars. And said railroad company shall pay to said Pullman Company for such use of its cars one-half of the regular rates then charged by the Pullman Company; but such compensation shall in no case exceed one-half of the fare received by the railroad company from such passenger.

Fifth. The Pullman Company agrees that it will do such cleaning of the cars as the railroad company is required to do by the provisions of said agreement at and for the sum of fifteen hundred dollars ($1,500) per month, the same to be paid and received in full compensation therefor.

Sixth. Should the railroad company hereafter acquire the control of additional roads, and desire the Pullman Company to operate sleeping cars upon the same, the Pullman Company shall have the right to do so under the provisions of the agreement hereinbefore recited as modified by this agreement, but should the Pullman Company decline to so furnish sleeping cars, then the railroad company shall have the right to make such arrangements as it may
89 desire for furnishing the same, and such cars shall have the right to run over such of the roads of the railroad company embraced in said agreement hereinbefore recited, as may be necessary to form through sleeping-car lines to accommodate the public.

Seventh. It is agreed that the railroad company shall not operate or permit the operation of sleeping cars, other than those of the Pullman Company over the railroads embraced in the said agreement, except only as provided in the eleventh article thereof; unless it shall be determined to be lawfully obligatory upon it so to do by the final decision of a court of competent and final jurisdiction.

In the event such decision shall be made, and the railroad company shall operate or permit the operation of sleeping cars other than those of the Pullman Company over said railroads in pursuance thereof, the Pullman Company may elect, at any time within nine months after such operation or permission, to terminate said agreement and this supplement at the end of nine months from notice of such election, and no claim or right of action for
90 damages shall exist by either party as against the other by reason of such operation of termination.

In case of such termination by the Pullman Company it is agreed that the railroad company shall thereupon purchase a portion of the cars and equipment furnished under said agreement in the manner and to the extent provided in the sixteenth article thereof, and as if said railroad company, of itself had exercised the right of termination therein reserved to it; that is to say, fifty per centum if so terminated on or before the expiration of five years; forty per centum if so terminated during the first period of three years then next succeeding; thirty per centum if so terminated during the second period of three years then next succeeding, and twenty per centum if so terminated during the third period of three years then next succeeding.

In witness whereof, the railroad company hath caused its corporate seal to be attached hereto, attested by the president
91 and secretary, and the Pullman Company has caused its corporate seal to be attached hereto, in like manner attested by its president and secretary.

THE PENNSYLVANIA RAILROAD COMPANY,
By G. B. ROBERTS, *President.*

[P. R. R. Co. Seal.]

Attest: JNO. C. SIMS, JR., *Secretary.*

PULLMAN'S PALACE CAR COMPANY,
By GEO. M. PULLMAN, *President.*

[P. P. C. Co. Seal.]

Attest: A. S. WEINSHIEMER, *Secretary.*

91½ (Endorsed:) In the United States circuit court, eastern district of Pennsylvania. Pullman's Palace Car Company *vs.* Central Transportation Company. Bill for injunction, etc., etc. Samuel Dickson, solicitor; O. A. Lochrane, Edward S. Isham, Joseph H. Choate, John C. Bullitt, Alfred Ennis, of counsel. Filed Jan'y 25th, 1887. Samuel Bell, clerk.

92 United States Circuit Court, Eastern District of Pennsylvania.

PULLMAN'S PALACE CAR COMPANY
vs.
THE CENTRAL TRANSPORTATION COMPANY.
} October Sessions, 1886. No. 44.

Answer of the Central Transportation Company.

1. We admit to be true, except as qualified by what we will immediately hereinafter specifically aver, the statements in the bill filed, on main pages 1, 2, 3, 4, 5, and 6, down to subpage 18.

For greater certainty we plead the contract of lease itself referred to in said portions of said bill, and deny any construction thereof not justified by what is therein provided.

We believe that certain of the contracts assigned by virtue of said lease to the complainants did expire and were not renewed. We are without sufficient knowledge or information to answer with any certainty as to which of said contracts were not, or could not, be renewed, and pray that the complainants, if they deem it material, may be compelled to prove how many of said contracts expired and were not renewed, and the reasons for non-renewal. We believe that certain of the railroad companies with which contracts existed, assigned by said lease, became merged into other railroad companies,
93 and that contracts were made with the latter which covered the running over original railroads, in some cases where none were made with the companies which, at the time of the lease, operated the same. We are without sufficient knowledge or information to aver with certainty which railroad companies were thus merged, and what contracts were thus made.

We do not believe that on the twenty-seventh day of January 1885, the only contracts for the operation of sleeping cars over lines of railroad companies specified in said lease, which remained then unexpired, were contracts with the Pennsylvania Railroad Company and with the Cincinnati, Hamilton and Dayton Railroad Company.

It is true that the complainants did, up to the twenty-seventh day of January, 1885, pay to us the sum of $264,000 per annum, stipulated to be paid in the said lease. It was their duty to make such payment, and as we are informed, believe, expect to prove, and aver, the complainants, after making said payments as they matured, realized a very considerable profit by reason of their operations under our lease.

We do not have sufficient knowledge of the condition of the cars demised to complainants by said lease at the time of the making thereof, and we are also without sufficient information, or belief, to enable us to answer concerning the expense incurred by the complainants in renewing, reconstructing, and replacing cars. So far as we have information, knowledge or belief, we believe, and therefore aver, that the cars delivered by us to the complainants were not in the condition described in the fourteenth and fifteenth subpages

of the bill, and that there was no such expense incurred by the complainant in repairing, renewing, reconstructing, and replacing the same, as is therein charged. We aver that the complainants were very derelict in the discharge of their duty to repair, renew, reconstruct, and replace, and that they allowed cars belonging to this company to become, and to remain, in a condition of repair such as was not justified by the lease.

We are without sufficient information or knowledge to answer with any definiteness concerning the truth of the averments
94 in the fifteenth and sixteenth subpages of the bill as to what was required of the complainants by the Pennsylvania Railroad Company concerning the cars turned over by us to the said complainants. So far as we have information or belief, said averments are not true. If they are material we demand that the complainants shall prove the truth thereof. We are advised that the averment on the seventeenth subpage of the bill as to the original cost of the cars delivered by us to the complainants is not material. We are without sufficient information or belief to answer the averment concerning that cost. We do not believe it to be true, and deny its truth.

We aver that the lease to the complainants resulted in a very great profit to them, far in excess of the amount of rental paid to us.

We do not know what number of cars, additional to those received from us, were used by the complainants on the Pennsylvania railroad. If the averment concerning such additional cars is deemed material we pray that it may be proved. We believe that the business done upon said railroad was so great and profitable that it became necessary for the complainants to add additional cars. The addition of such new cars inured to their profit, and was made because of that fact.

2. We are advised by counsel, and therefore aver, that the complainants' construction of the eighth paragraph of the lease, as the same is stated on the eighteenth and nineteenth subpages of the bill, is incorrect.

We are advised by counsel, and therefore aver, that a right was conferred by said paragraph upon the complainants, upon the happening of the contingency therein stated, to declare the contract null and void upon performance by them of certain conditions precedent of surrender of property, assignment of contracts, &c.

We are advised by counsel, and therefore aver, that there was no duty upon us to agree with the complainants, in any contingency, as to the sum or share of the net revenues from remaining lines of roads to be paid to us in lieu of the annual sum of $264,000.
95 We are advised by counsel, and therefore aver, that it was only in case of a mutual agreement as to such sum or share, which agreement neither party was compelled to enter into, that complainants were entitled to retain our property, and to pay a less annual compensation therefor than the rental of $264,000.

3. We are willing to admit so much of the averments of the twentieth and twenty-first subpages of the bill as charge that at

some time previous to the expiration of complainants' contract with the Pennsylvania Railroad Company it became known by the former that they could not obtain a renewal upon terms as advantageous to them as were those of the existing contract; but we deny that it was known by them that they could not obtain such renewal upon terms sufficiently advantageous to realize therefrom a revenue of $264,000 per annum.

We deny that the complainants commenced any preparation necessary to exercise under the eighth section of their lease with us any option similar to that now claimed by them in the eighteenth subpage of the bill to exist. We not only deny that such option existed but we also deny that they ever prepared to surrender, or intended to surrender, to us, the property demised by us to them.

We admit that there were negotiations, which extended over a considerable period of time, between the complainants and the Pennsylvania Railroad Company, and that the gentlemen who then acted as directors of our company were apprised of a portion of those negotiations. We deny, however, that they were ever fully apprised of the whole of said negotiations, or that they were informed of the same to any greater extent than the complainants deemed it advantageous to disclose them.

We deny that it was ever the intention of the complainants to really surrender to us our property. We deny that the complainants at any time, during the course of their negotiations with the Pennsylvania Railroad Company, believed that there existed in them the option now claimed by them in the eighteenth subpage of the bill to exist.

96 We aver that during the whole course of said negotiations the complainants were under the belief that it was necessary for them, in case they failed to agree with us concerning the amount of rent thereafter to be paid to us, either to continue to pay the original rental of $264,000 or to make to us the surrender of our property and assignment of contracts, required by the terms of the lease.

We aver that prior to the conclusion of any arrangement for renewal of the contract between the complainants and the Pennsylvania Railroad Company, the stockholders of our company, regularly convened, authorized their directors to enter into negotiations with the complainants for a modification of the lease; but that with the full knowledge of the complainants, said stockholders by said resolution required the directors to submit to a stockholders' meeting for approval, before any formal execution of such modifications, the terms thereof. We aver that in all the interviews and negotiations between the directors of our corporation and the complainants which preceded the making of the arrangement between the latter and the Pennsylvania Railroad Company in 1885, it was distinctly understood by the complainants that no action by our directors was intended to bind us until after such action had been approved by our stockholders in meeting duly convened. We aver that the complainants were not induced to enter into any arrangement with the Pennsylvania Railroad Company, and that they never did enter

into any arrangement with the Pennsylvania Railroad Company, upon any other understanding than that no modification of our lease could be made, or would be made, or was intended to be made, until after the same had been ratified by our stockholders thus convened.

4. We admit that the gentlemen who acted as directors of our corporation, during the course of the negotiations between the complainants and the Pennsylvania Railroad Company, were informed by the complainants that it was not possible for them to obtain from said railroad company any contract which would enable
97 them to make an annual profit of $264,000. We aver that the said directors had no means of information concerning the said profits, or the probable amount thereof, saving such as was derived by them from the complainants. It is quite probable that said directors acted under the belief that no contract was obtainable which would realize a profit of $264,000 per annum. We aver that the information thus given to our directors by said complainants was knowingly false, and that a contract was obtainable, and was obtained, which realized to the complainants a greater profit than $264,000 per annum.

As we have before admitted, our said directors were anxious on behalf of our company, that the complainants should renew their contract with the Pennsylvania Railroad Company; but they acted from beginning to end upon false information given to them by the complainants, and they always acted with the announced intention not to bind the company until after our stockholders' consent had been obtained.

5. We deny the averments of the twenty-third and twenty-fourth subpages of the bill. No such agreement or understanding was arrived at as is therein averred, and the complainants did not act in reliance upon any such understanding or agreement.

The only arrangement or agreement arrived at was the following: The directors who were then acting for our company, misled by the false representations of the complainants as to matters of fact, peculiarly, and almost exclusively, within the knowledge of the latter, did agree that our corporation would accept a reduced rental of $66,000 per annum, provided that our stockholders in meeting duly convened should approve of such reduction. They passed a resolution to this effect, requiring such approval of the stockholders. A contract was signed and delivered to the complainants, upon the condition announced to them that said contract should not be binding until approved by our stockholders. With the knowledge of the complainants, by virtue of said resolution of our directors, a stockholders' meeting of our corporation was convened for the purpose of determining whether or not they
98 would thus approve. Said meeting was duly convened, and almost unanimously disapproved of the proposed modification agreement theretofore approved by our directors. The complainants were informed of this fact prior to completing their agreement with the Pennsylvania Railroad Company.

We aver that at the time of notification to complainants of the re-

fusal of our stockholders to approve of any reduction, the complainants were not bound by any executed and delivered contract with the Pennsylvania Railroad Company.

Subsequently to said notification, the contract referred to in the bill was formally delivered by the Pennsylvania Railroad Company, and by the complainants, the latter believing it to be for their interest to take the chances of the future, inasmuch as said contract was a very profitable and necessary one to them.

6. We deny the averments in the twenty-fifth subpage of the bill. There were no such assurances to the complainants, given by us, or by our directors, as are therein averred. The only understanding that existed was that which we have heretofore stated.

7. We are advised by counsel, and therefore aver, that the charge in the twenty-sixth subpage of the bill concerning the power and authority of our directors is immaterial. We aver that our directors never professed to act by way of modification of said lease, unless said modification should be approved by our stockholders. We aver that it was intended that the action of our directors should be controlled by the stockholders; that this intention was announced to the complainants; and that they acted with the knowledge that such conduct and action of our directors was not intended to bind the company until after the approval of the stockholders.

We aver that in proceedings on the common-law side of this court in an action brought by us against the complainants to recover rental at the rate of $264,000 per annum, accruing between the twenty-seventh day of January, 1885, and the first day of
99 October, 1885, the complainants interposed the defense that we were not entitled to receive said rental because of the execution by our company of the agreement bearing date the twenty-seventh day of January, 1885, set out as "Exhibit C" of the bill. They averred that said contract was executed by this company as a binding, unconditional contract; that on the faith thereof they had been induced to enter into the lease with the Pennsylvania Railroad Company, by them herein set up; and that said modified agreement had been duly delivered. In said proceedings we asserted that the contract was executed and received by the complainants, upon the understanding that the same should not be binding upon us until after it had been approved by our stockholders in meeting duly convened; that said stockholders in meeting duly convened had disapproved the same; that this disapproval had been notified to complainants; that said modification was not binding upon us; and that the complainants were therefore bound to pay the rent stipulated in the original lease. The issues of fact thus raised were duly submitted to a jury, who duly found that said modification of the original lease had not been delivered as a binding agreement of this corporation, and that the original lease had not been modified by our corporation, but was binding upon the complainants. Judgment was duly entered upon this verdict in this court for the rental accruing subsequently to the 27th of January, 1885, and prior to the first day of October, 1885, at the rate of $264,000 per annum.

We are advised by counsel, and therefore aver, that the judgment

of this court upon said issue of fact is binding and conclusive upon the complainants, and we plead the same in answer to all their averments concerning said modification, and in bar of all claim for relief as to any of the matters now urged.

We aver that in the course of those proceedings the whole matter of the conduct and action of our directors, and of our corporation, and of the negotiations and interviews in this bill averred, were submitted to the jury.

8. At various meetings of our stockholders which have been
100 held since the one which was called to pass upon the question of approval or disapproval of said modification of the original lease, the question of our relations with the complainants has arisen, and in every instance our stockholders have opposed said modification as being ruinous to our corporation and most unfair to us. The president of the complainants has made great exertions from time to time to purchase shares of stock of our corporation with a view to controlling the same in the interest of his corporation and adversely to the interests of our company; but as yet, though he has succeeded in acquiring a large number of shares, he has not obtained a majority of the same. Our corporation still insists upon its right to recover rental under the original lease.

9. We deny all the averments in the bill to the effect that the contract entered into between the complainants and the Pennsylvania Railroad Company does not yield to the former a net income or revenue of $264,000 per annum. We aver that the actual net cash income or revenue derived under said lease by the complainants is in excess of $264,000 per annum. We further aver that complainants derive therefrom, by reason of the facilities of operating other lines of sleeping cars on other railroads, and otherwise, very large profits, in addition to their cash profits, the amount of which we are unable to state.

10. We deny that there were ever any negotiations between our directors and the complainants, upon the basis of turning over to our company any share of the net revenue to be derived by complainants from the lease to be made with the Pennsylvania Railroad Company. We aver that the negotiations were for the purpose of forcing our directors into agreeing to accept on behalf of our company a specified rental; that our directors were induced to believe, if they did believe, that $666,000 per annum would be a fair rental under the circumstances, by reason of false representations by the complainants concerning facts peculiarly and almost exclusively within their knowledge.

101 11. We again deny that any contract was ever entered into by complainants with the Pennsylvania Railroad Company upon any other understanding than that no modification of the lease of the complainants could or would be agreed upon until after the approval of our stockholders in meeting duly convened.

12. Subsequently to the institution of proceedings at common law against complainants for the recovery of rentals after the twenty-seventh day of January, 1885, at the rate of $264,000 per

annum, a bill in equity was filed in this court by the complainants against us for the purpose of enjoining said proceedings. During the course of the argument upon an application by complainants under said bill, for an injunction, which argument was held in the month of May, 1886, we informed the complainants through their counsel, that we were ready to accept a surrender of our property, and to annul the original lease provided the net revenue derived by complainants under the operation of said lease was less than $264,000 per annum. Complainants refused to acquiesce in this proposition, and insisted upon trying the issue of fact before referred to, as to their right to maintain that said lease had been finally, and in a binding manner, modified by said agreement dated the 27th of January, 1885.

It was only after said issue had been decided against them that they abandoned their claim to stand upon said modified agreement as a binding one upon this corporation, and offered to surrender our property. We will state hereafter the manner in which said offer, which was made on or about the first day of July, 1886, was made.

13. We deny the averments of fact in the thirty-first, thirty-second, thirty-third, thirty-fourth, thirty-fifth, and thirty-sixth subpages of the bill, saving to the extent that they have heretofore been admitted to be true. There were discussions and conversations between our directors and the complainants concerning matters therein referred to; but these discussions were all upon
102 the distinct understanding that nothing could, or should, or would, be binding upon our corporation until after the approval of our stockholders.

We deny in the most emphatic manner that the sum of $66,000 was more than a fair share of the net revenues derivable under said contract with the Pennsylvania Railroad Company. We aver that not only was it not more than a fair share; but that was an absolutely inadequate share.

14. We are willing to admit that the complainants made as good a bargain for themselves as was possible, with the Pennsylvania Railroad Company. We know nothing about the reasons or statements influencing, and made by, the officers of said railroad company, but we deny that the contract made was one from which no greater profit than $66,000 per annum was derivable by complainants.

We do not believe that there was any real pressure upon the complainants to determine the matter of a new lease with the Pennsylvania Railroad Company prior to the twenty-eighth day of February, 1885; but we believe that they informed our directors that there was such pressure, and by reason of such information, which was false, induced them to act more hurriedly than they otherwise would have acted.

15. We deny so much of the averments on the thirty-seventh, thirty-eighth, thirty-ninth, and fortieth subpages of the bill as charge that any agreement was executed and delivered by our corporation as one to be binding upon it until after the approval of

our stockholders. We aver that such delivery of the agreement referred to on said subpages was made upon the condition of such approval, and we aver that the question of fact as to whether there was, or was not, such condition, was passed upon, and finally determined, in the decision by the jury in the proceedings above referred to, of the issue of fact concerning the same raised between us and complainants.

We admit that said agreement did recite that the net revenue possible under the lease had fallen below the sum of $264,000
103 per annum; but we aver that such recital rested upon no other information than that derived from complainants, and that said information was false to their knowledge.

16. We deny so much of the averments of fact on the fortieth, forty-first, forty-second, and forty-third subpages as charge substantially that any binding modification of the lease was entered into between our corporation and complainants, and that any contract was entered into between the complainants and the railroad company upon the faith of a belief that such binding modification had been made.

We aver that the contract between the Pennsylvania Railroad Company and the complainants was made with knowledge that the said modification of the lease could not, and would not, be binding upon our corporation until after it had been approved by the stockholders, and that said modification had been disapproved by them almost unanimously.

We deny all averments of bad faith and evasion concerning these and any other matters.

17. We are unable to answer as to the advantageous character of contracts entered into with the Pennsylvania Railroad Company. We call attention to the fact that no copy of the same is attached to the bill.

18. We do not know to what extent the net earnings of the complainants, under their operations with the Pennsylvania Railroad Company, have been diminished by the new contract. We do not doubt that they have been diminished. If the diminution amounts to $360,000 per annum, we believe, and therefore aver, that, under the original contract, a profit of upwards of $624,000 per annum inured to the complainants.

19. We are advised by counsel, and therefore aver, that we are entitled to the benefit of all profits derivable by the complainants from a contract with the Pennsylvania Railroad Company over lines operated by said railroad company at the time of the execution of the original lease as well as over lines operated by it at the present time under arrangements made by it subsequent to the year 1870.

104 20. In reply to averments on the forty-seventh, forty-eighth, forty-ninth, fiftieth, and fifty-first subpages of the bill, we say:—

(*a.*) We are not estopped to deny that the amount, $264,000 per annum, is more than the total net earnings or revenue possible to complainants under the lease with the Pennsylvania Railroad Com-

pany, because the only sources of information concerning such net earnings, possessed by our directors, were those furnished them by complainants who deceived our directors as to the amount thereof.

(*b*) No modification of the original lease has ever been entered into between the complainants and our corporation.

(*c*.) So long as the complainants retain our property and fail to perform the conditions precedent to their right to cancel said original lease of 1870, the same is binding upon them.

(*d*.) There is no obligation upon our corporation to accept any annual sum as compensation, less than that named in the original lease.

21. We deny the averments of fact in the fifty-first, fifty-second, and fifty-third subpages of the bill, saving so far as the same are herein admitted to be true. We deny most emphatically that we ever repudiated any agreement entered into with the complainants, or that we did anything more than exercise the power reserved to our stockholders, prior to any modification being binding upon the corporation, to approve or disapprove the same.

22. We admit that suits are now pending in this court to recover the rental due to us by the complainants, at the rate of $264,000 per annum, up to the first day of July, 1886. We aver that there is no defense to the suit for rental up to that date, because all the questions of fact, upon which the complainants rely, have been conclusively determined against them by the verdict of the jury in the former action, and the judgment of the court entered thereon upon issues of fact which involved all the points set up in the bill.

105 23. We admit that suits are also pending in this court to recover rental from the complainants, at the rate of $264,000 per annum, subsequently to the first day of July, 1886.

The only issue involved in said last-named suits, is whether or not the net revenue derived by the complainants from lines of railroads operated by railroad companies with whom this corporation had contracts prior to 1870, amount to $264,000 per annum; and also, whether or not the complainants have properly annulled the original lease by making such surrender and assignment as by said lease is required as a condition precedent to their annulling.

We are advised by counsel, and therefore aver, that these issues are issues of fact such as are properly determinable only on the common-law side of this court.

We aver that the net revenues derivable by complainants as aforesaid, have not been reduced below $264,000 per annum. They aver that they have. If they are correct in their averment of facts, and can prove the same, we will not be able to dispute their right to annul the lease after performance by them of conditions precedent.

We further aver, that complainants have never tendered to us our own cars or proper equivalents therefor; that the cars which they tendered to us were not cars which had been substituted for our own; and that they have never tendered to us an assignment, legal or equitable, of the contracts to which we were entitled. They assert that they have made such tender. This issue of fact, we are ad-

vised by counsel, and therefore aver, is one properly determinable upon the common-law side of this court and not in equity.

24. We deny the averment of facts made in the fifty-fourth, fifty-fifth, and fifty-six subpages of the bill, saving as the same are herein admitted to be true.

25. We deny, as utterly without foundation in fact, the averment on the fifty-sixth subpage that complainants are not receiving, and cannot earn, one-quarter of $264,000 from the property demised to them by us or from any other rights acquired by them under
106 our lease and under the contracts with the Pennsylvania Railroad Company.

20. We are advised by counsel, and therefore aver, that the facts averred in the fifty-seventh and fifty-eighth subpages of the bill are not true, saving as herein admitted. In the proceedings at law before referred to, the complainants did not claim to exercise any rights under the eighth section of the lease, because, as we believe, and therefore aver, it was then deemed by them more advantageous to claim that a binding agreement had been entered into reducing the rental to $66,000 per annum. We are advised by counsel, and therefore aver, that it was competent for them at any time after the notification by this corporation of its intention to hold them to the payment of the orginal rental, if there had been such a reduction of income as they now claim, to surrender our property and to annul the lease. They did not deem it to their interest to make such surrender, but did deem it to their interest to claim that there was a binding contract to reduce to $66,000 per annum, the amount of rent to be paid. It was only after said verdict and judgment that they deemed it to be to their interest to claim a right to retain our property, and to pay a share, to be ascertained, of the revenue derivable therefrom.

They never exercised any such right as they now claim; but deliberately, and as we claim advisedly, on the 1st July, 1886, notified us that they had canceled and annulled our original lease, because of an alleged reduction of the net revenue below $264,000 per annum. They persisted, until the date of filing the bill, in the position thus taken.

We denied their right thus to annul, because of our claim that there had been no such falling off of revenue as was claimed. We also denied that they had made such tender as entitled them to a cancellation of the lease. Until the filing of this bill, we were under the belief, derived from their statements, that they considered their contract with us as entirely annulled. We are advised by counsel, and therefore aver, that it is not competent for them at one time to elect to treat their lease as null, and then, at a subsequent
107 period, to claim that it is not null and void, but that it is binding upon us.

We did not deny the right of complainants to annul the lease, provided there had been such a falling off in net revenue as they claimed, and provided they had made the tender required under their agreement as a condition precedent.

27. We are without sufficient information or knowledge to answer

concerning the averments in the sixty-fourth, sixty-fifth, sixty-sixth, sixty-seventh, sixty-eighth, sixty-ninth, seventieth, seventy-first, and seventy-second subpages of the bill. We formally deny the same, not believing them to be substantially true, and we call upon the complainants to make proof thereof if the same are deemed material. We have a great deal of information which leads to a belief that the averments are untrue; but we are advised by counsel, and therefore aver, that in the absence of information which can only be obtainable from an examination of the books and papers of the complainants, we are not bound to answer further concerning the same.

We are advised by counsel, and therefore aver, that complainants are not entitled to annul a contract without the performance of conditions precedent undertaken by them to be performed, even though it may be inconvenient and expensive for them thus to perform.

28. We are without such knowledge and information as will enable us to answer further than we have herein done the averments of fact on the seventy-second, seventy-third, seventy-fourth, seventy-fifth, seventy-sixth and seventy-seventh subpages of the bill. Knowledge concerning the same is almost exclusively within the power of complainants. We claim that if their averments in these respects are material, they shall be compelled to prove the same.

29. In answer to the averments on the seventy-eighth and seventy-ninth subpages of the bill, we say that we did refuse to receive cars and property tendered to us by complainants; but we did so for reasons hereinbefore set forth. We are advised by counsel, and therefore aver that such refusal under such circumstances does not justify the complainants in claiming equitable relief.

108

We aver that there is no such difficulty in the way of performance by complainants of the conditions precedent to their right to annul their lease with us as justifies their application to a court of equity for relief. The questions involved are questions of fact peculiarly determinable by a jury.

The form of the contract entered into by complainants with the Pennsylvania Railroad Company was one of their own choice. We aver that said contract was entered into by them for reasons of their own, and because the making of such contract was deemed by them advantageous. We deny that it was induced by any improper conduct of this corporation or its officers.

30. In reply to the averments on the eighty-fourth and eighty-fifth subpages of the bill, we say, under the advice of counsel, that the lease entered into between our corporation and the complainants was legal, and that if it were not legal such illegality does not justify an application by the complainants for equitable relief.

31. We pray that we may, under the rules of court in such cases made and provided, be permitted to avail ourselves of all matters of defence in law or to the merits of the bill in our above answers set out of which we might have availed ourselves by demurrer or

plea in bar with the same force and effect as though we had filed a separate demurrer or demurrers, plea or pleas, in bar.

32. We pray that we may be hence dismissed with our reasonable costs and charges in this behalf most wrongfully and needlessly sustained.

Attest:

[SEAL.] JOHN S. STEVENS, *President.*

FRANK WECKERLY, *Treasurer.*
JOHN G. JOHNSON, *Of Counsel.*

109 (Endorsed:) No. 44. October sessions, 1886. In the United States circuit court for the eastern district of Pennsylvania. In equity. Pullman's Palace Car Company *vs.* The Central Transportation Company. Answer of the Central Transportation Company. John G. Johnson, attorney for defendants. Filed 15 April, 1887. Samuel Bell, clerk.

110 In the Circuit Court of the United States for the Eastern District of Pennsylvania.

PULLMAN'S PALACE CAR COMPANY
vs.
THE CENTRAL TRANSPORTATION COMPANY. } In Chancery.

Now comes complainant, by its solicitor, and moves the court to grant a preliminary injunction herein, as prayed for in the bill of complaint.

SAM'L DICKSON,
For Compl't.

Endorsed: No. 44. October session, 1886. U. S. circuit ct., east. dist. Penna. Pullman's Palace Car Company *vs.* Central Transportation Company. Motion for injunction. Filed 10 April, 1887. Samuel Bell, clerk.

111 United States Circuit Court, Eastern District of Pennsylvania.

PULLMAN'S PALACE CAR COMPANY
vs.
CENTRAL TRANSPORTATION CO. } Bill for Injunction, etc.

Affidavits.

In the United States Circuit Court, Eastern District of Pennsylvania.

PULLMAN'S PALACE CAR CO.
v.
CENTRAL TRANSPORTATION CO.

GEORGIA,
Bibb County, } *ss:*

Before the undersigned personally appeared Augustus O. Bacon, of the county of Bibb and State of Georgia, who, being duly sworn, deposes and says as follows:

In the year 1884, deponent was assistant general counsel of Pullman's Palace Car Company, and during a considerable portion of said year was in immediate charge of the legal department of said company.

Deponent says that he has read and is familiar with the bill lately filed in the United States circuit court for the eastern district of Pennsylvania, by Pullman's Palace Car Company, as complainant, *vs.* The Central Transportation Company, defendant; that as such assistant general counsel he was actively engaged in a large
112 part of the negotiations therein referred to and recited, between the said complainant and the said defendant; and that so far as the averments of said bill relate to matters that came within his knowledge, they are true.

Deponent was present and took part as counsel aforesaid in a number of extended interviews between George M. Pullman, as president of the Pullman Company, on the one part, and the principal officers and stockholders of the Central Transportation Company on the other part, during the said year 1884 in the city of Philadelphia, and in those interviews the subject-matter of negotiation and discussion was that growing out of the approaching termination of the then existing contract between the Pennsylvania Railroad Company and Pullman's Palace Car Company, relative to the running of the sleeping cars of the latter company over the said Pennsylvania railroad, and the consequent necessary termination of the contract of lease between the Pullman Company and the said transportation company, or a readjustment of the rental under the same.

The contract under which the Pullman Company was then operating its cars over the lines of the Pennsylvania Railroad Company was to expire on the 27th of January, 1885, and was substantially the only one remaining of those mentioned in said lease; and the Pullman Company had been advised by the administrative officers of said railroad company when negotiations for its continuance were opened, that it would not be renewed, and that said railroad company would not make a new contract on any terms, corresponding in advantage to the Pullman Company with those of the expiring contract; and in such case the amount which could be
113 earned under the Central Transportation Company's lease, it was conceded by all parties, must of necessity be less than the annual payment of $264,000 reserved in said lease.

An option had in such case been reserved to the lessee in said lease to annul said contract of lease and so terminate it, and surrender the demised property to the lessor under the conditions of said contract of lease; and in view thereof, the said lessee determined and deponent was instructed to take the necessary steps thereto in connection with the general counsel, Judge Lochrane, to exercise the said option and to annul the said lease.

This resolution and purpose were communicated to the officers of the Central Transportation Company, and under said instructions several drafts of formal communications and notices to that effect were prepared by deponent and delivered to the president of the Pullman Company; but whether they were formally delivered to

the Central Transportation Company or not deponent cannot say; but deponent went immediately with the president, Mr. Pullman, to Philadelphia, from Chicago, for the purpose of meeting the officers of the Central Transportation Company and giving them such notice, and arranging the details of the surrender of the demised property; and they took with them the auditor of the Pullman Company, Mr. C. H. Davie, for the purpose of having him give all information from his department that might be necessary in the premises relative to the demised property.

The determination of the Pullman Company to annul the lease was earnestly opposed by the representatives of the Central Transportation Company, and it was urged by them that it would
114 be much better for both parties to continue to operate the Pennsylvania lines under such contract as could be obtained than to annul the lease. They urged that it would be better for the Pullman Company to retain the operation of the railroad lines, and better for the transportation company to have the demised property retained under the lease, for a compensation readjusted under the provisions of the lease, than to have it thrown back upon their hands without any lines of railway on which to use it; it being well understood and conceded that the Pennsylvania Railroad Company would not contract for the operation of its lines with the Central Transportation Company; and they said if the Pullman Company insisted upon annulling the lease, they should insist upon the right to select, in lieu of the cars which had been demised under the lease, 119 of the best Pullman cars then running over the lines of the Pennsylvania railroad, on the ground that such cars had been substituted for the cars originally demised by them, the suggestion of which right deponent vigorously disputed.

In compliance with the request and earnest desire of the transportation company, and with the assurance that the officers of said company would give all the assistance in their power, the officers of the Pullman Company continued to prosecute negotiations with the Pennsylvania Railroad Company for a new contract, and they used every possible effort, and labored in the most persistent manner, to secure from the Pennsylvania Railroad Company the most advantageous contract that they could. These negotiations between the Pullman Company and the Pennsylvania Railroad Company,
115 and between the Pullman Company and the transportation company, continued during a period of several months before deponent ceased his connection with the Pullman Company, and were carried on during this time in a large number of protracted and earnest interviews between the officers of the said several companies.

What transpired at the various interviews between Mr. Pullman and deponent and others representing the Pullman Company with the officers of the Pennsylvania Railroad Company, in the way of negotiations looking to a new contract, and the difficulties that were met, were promptly and fully reported to the representatives of the transportation company, and made the subject of discussion with them as matters progressed; and it was fully recognized and con-

ceded by them, as a a well-known fact, that, even if no contract was made by the Pennsylvania Railroad Company with the Pullman Company, said railroad company would in no event make any contract for the running of sleeping cars over its lines with the transportation company.

In the course of these negotiations, Mr. Pullman became at times very apprehensive that it would be impossible for him to effect a contract with the Pennsylvania Railroad Company, under which he could afford to operate the sleeping-car system over the Pennsylvania Railroad Company's lines, and from time to time so expressed himself to the representatives of the transportation company; but they uniformly insisted that the Pullman Company would be able to effect a contract with the Pennsylvania Railroad Company, that the Pullman Company and the transportation company could work
under, and encouraged and urged him to persevere in his
116 effort to that end, and represented to him that they would
give and were giving him, all the assistance in their power to accomplish that result.

This embarrassment lay not in the doubt as to whether any contract at all could be obtained and made with the Pennsylvania Railroad Company, but in the terms upon which one could be secured. It seemed doubtful whether one could be made which the Pullman Company could afford to make if it had to pay under the lease any considerable amount of rental to the transportation company. The said railroad company appeared at all times willing to make a new contract giving the Pullman Company the operation of sleeping cars over its lines, but insisted upon terms that would reduce the possible profits of the business to so low a figure, that it could not afford to properly operate the lines, and also pay any considerable amount of rental under the lease. Deponent recollects many interviews in which the representatives of the Pullman Company protested on this ground against the onerous conditions insisted upon by the officers of said railroad company. Deponent also recalls the fact that said railroad company wanted to reserve to itself the running of all the parlor or chair cars used in the day service, leaving to the Pullman Company only the running of the sleeping cars. They refused to allow any mileage on cars as had been always done under the provisions of the previous contract. They claimed that they could procure and operate cars of their own at such a rate of cost that they ought not to allow terms to the Pullman Company under which it could earn more than a small percentage upon the capital it would have invested in the operation of the lines involved in the contract.

It insisted upon an option to take a share in the Pullman
117 Company's business over its lines. Of all these things, and
many others of like sort, the officers of the transportation company were informed, and all these matters of difficulty were made the subject of discussion with them by Mr. Pullman and deponent. It seemed as if no contract could be made under which the Pullman Company could afford to continue the lease in force; and as if no use whatever could be made by the transportation com-

pany of the property demised by the lease, if that property should be surrendered and the lease terminated. Accordingly, the representatives of the transportation company urged and pressed the Pullman Company to arrange the best available contract it could with the railroad company. Of course, the only solution of the difficulty possible, was by the reduction of the rental under the lease to correspond with the terms of such new contract as should be made, and it was perfectly understood that this would be done.

What separate communication they, the transportation company's officers, may have had with the Pennsylvania Company people deponent does not know, but that no contract could be obtained for operating sleeping cars under which any such sum as $264,000 per annum could be earned, was a recognized and fully conceded fact by them. Mr. Pullman told them again and again that if they held at all to the original rental reserved in the lease of $264,000 per annum, the Pullman Company could not, and would not, make another contract with the Pennsylvania Railroad Company, and accordingly that rate of rental was unequivocally and entirely given up and abandoned as a possible feature or element in any
118 future relations. That rate of rental came to be definitely recognized, in the progress of their discussions and negotiations, as a thing that was gone by and had been passed, like a milestone on a road. It was wholly done away with. All the proceedings and negotiations assumed the abrogation of that as a conceded and settled basis.

Deponent says that while his connection as counsel of the Pullman Company ceased before any final agreement between the parties had been settled, fixing the amount of future rental, their negotiations had progressed to a point where the understanding was definitely reached that the original rental of $264,000 should not be demanded or paid after the expiration of the existing contract with the Pennsylvania Railroad Company, and that the amount of the rental which should thereafter be demanded and paid should be based upon, and determined by, the amount which should be subsequently ascertained, according to the terms of section "eight," to be justly payable to the Central Transportation Company under the new contract with the Pennsylvania Railroad Company, when made, based, as it was to be, upon the amount which could be earned by the Pullman Company under the same.

Deponent cannot now repeat the language of the various conversations which occurred in the course of all these negotiations, but the effect and result was that the Pullman Company was to abandon its proceedings and purpose to put an end to the lease: that the original rental of $264,000 should end with the expiration of the then current contract with the Pennsylvania Railroad Company, and that the future compensation or rental should be ascertained under the provision of that clause of the lease called "eighth,"
119 and depend in amount upon the net earnings that could be made under such contract with the railroad company as could be obtained.

In all that was thereafter said and done while deponent's associa-

tion with the business continued, the parties assumed this to have been definitely agreed upon. The conclusion that the original rental should end with the current Pennsylvania railroad contract, and that the rental thereafter should be governed by the provisions of section "eighth," was, as deponent understood it, clear and definite; and during said interviews, all the acts and expressions of all parties concerned, including the representatives of the Central Transportation Company, indicated an understanding to the same effect, equally clear and definite.

AUGUSTUS O. BACON.

Sworn to and subscribed before me, this 15th day of March, 1887.

[NOTARIAL SEAL.] D. H. ADAMS,
Not. Pub., Bibb Co., Ga.

120 Circuit Court of United States, Eastern District of Pennsylvania.

PULLMAN PALACE CAR COMPANY
vs.
CENTRAL TRANSPORTATION CO.

Charles E. Pugh, being duly sworn, on oath says:

That he is, and has been for a number of years last past, general manager of the Pennsylvania Railroad Co., and that he was such general manager during the years 1883, 1884 and 1885; that the contract under which the Pullman Palace Car Co. was running sleeping cars on the lines of the Pennsylvania Railroad Co. during the years 1883 and 1884 expired on the 27th of January, 1885; that affiant was familiar with, and took part in, the negotiations between the officers of the Pullman Company and the railroad Co. which resulted in the execution of the contract and supplemental contract between them, which are dated respectively the 26th and 27th of January, 1885; that the negotiations concerning the terms upon which the Pullman Company should operate its cars on the lines of the railroad Co. began a long time before the expiration of the contract expiring in January, 1885. A good many interviews were had between the officers of the two companies upon that subject, and affiant was present and took part in many of them. The Pullman Company had been notified before these negotiations began that the then current contract would not be renewed, and they were given to understand that the railroad Co. would not make
121 any contract except upon terms much more favorable to the railroad Co. than were contained in that contract. The railroad Co. had, at one time, thought of running its own sleeping cars, but this project was afterwards put aside; its officers preferred to make a contract with the Pullman Company for that service, because the Pullman Company was operating its cars under contract, on very nearly all the lines of railway with which the lines of the Pennsylvania Co. connected in different parts of the country.

The officers of the Pullman Company strenuously pressed the

railroad Co. for better terms in the future contract than the latter were willing to concede; they insisted that they had become satisfied that, so far as the cost of the service was concerned, they could put the equipment upon their road at such a cost to them that they were not willing to accept the terms that would yield the Pullman Company a net revenue of more than a moderate per cent. upon the capital it would have invested in the service on the Pennsylvania lines. The Pullman officers, however, were unwilling to accept such terms. They stated that they were embarrassed by the consideration that under such a contract they could not afford to pay any rental whatever to the Central Transportation Co. under its lease; that it had been settled and agreed that the rental to be paid the transportation company was to be governed by the amount of revenue that could be earned under the railroad contract that should be made, and that they could not afford to make such a contract that was proposed for that reason, unless a definite arrangement were first made with the Central Transporta-
122 tion Co. as to the amount to be paid to it. The negotiations upon this subject were very frequent and extended. Mr. Pullman, and the other Pullman officers, said that it was understood and settled that the terms of the new contract would govern the future payment they would make to the Central Transportation Co., and that it was important for both these companies that the railroad contract should be upon such terms that the Pullman Company could afford to pay some rental to the transportation Co., and their embarrassment from that cause was apparent, and the Pullman officers labored assiduously and persistently to obtain the best terms that they could.

If the Pullman Company had dropped out, and no contract had been effected with it, the railroad Co. would doubtless have procured its own equipment, and would have operated it. In the course of these negotiations, I had a good many conversations with several of the officers and directors of the Central Transportation Co.; particularly, I recall interviews with Mr. Wolverton and Mr. Lockard, and I had a good deal of talk, from time to time, with Mr. Cottringer, who was then the secretary of the Central Transportation Co. They knew from officers of the Pennsylvania Railroad Co. that the Pullman Company was having a great deal of trouble in getting such a contract as it could afford to make. Mr. Wolverton expressed himself as very anxious that a new railroad contract should be made, and that he wanted one on the best terms that could possibly be secured, because, he told me, it was settled and understood that the rental or compensation to be paid by the Pullman Company to the transportation Co., after the expiration of the current rail-
road contract—I mean the one expiring in January, 1885—was
123 to depend upon, and be governed by, the earnings under the new railroad contract that should be made. This was the same statement that the Pullman officers had made, and seemed to be the agreement between them. I had similar conversations with Mr. Lockard; I remember that he said that Mr. Pullman was trying to drive a hard bargain with the transportation Co., and I told him that

I guessed Mr. Pullman "had to drive a hard bargain, because I knew the Pennsylvania Railroad Co. was driving him to the terms of a very close contract with it." I had talk upon this subject with Mr. Cottringer from time to time; he expressed himself anxious about the terms of the proposed contract between the Pullman and the railroad companies, because he wanted to figure on what ought to be paid to the transportation Co., and he stated that it had been settled or arranged that what the transportation Co. was to receive was to depend upon the terms of that contract; I remember that Mr. Wolverton said to me at one time that the rental theretofore had been twelve per cent., or something like that, upon the Central Transportation Company's stock, and that after the expiration of the existing railroad contract he wanted the Pullman Company to pay them eight per cent. I said to him: "Mr. Wolverton, you will never get it; the Pullman Company can't pay it; it will never get a contract that will enable them to pay it." Throughout the whole negotiation the officers of the Pullman Company labored most earnestly to procure the best contract possible, and I am satisfied that the contract that was eventually made was the best one that could have been procured.

124 Mr. Wolverton, Mr. Lockard and Mr. Cottringer plainly understood, and gave me to understand, that the old rental of twelve per cent, or something like that which had theretofore been paid, was to end with the expiration of the then current railroad contract, and that a rate based on the earnings under the new railroad contract that was being negotiated and was being made was to be substituted for it.

CHAS. E. PUGH.

Sworn and subscribed to before me, a notary public of the Commonwealth of Pennsylvania, residing in the city and county of Philadelphia, on this twenty-sixth day of March, 1887.

Witness my hand and notarial seal.

[NOTARIAL SEAL.] JNO. C. SIMS, JR.,
Notary Public.

125 Circuit Court of United States, Eastern District of Pennsylvania.

PULLMAN PALACE CAR COMPANY
vs.
CENTRAL TRANSPORTATION CO.

CITY OF PHILADELPHIA, } *ss:*
State of Pennsylvania, }

William S. Lane, of the city of Philadelphia, and State of Pennsylvania, being duly sworn on oath, says:

I am, by profession, a lawyer, and have been engaged in the practice of that profession in the cities of Philadelphia and Erie for forty-two years. In the years 1883 and 1884, and for a part of 1885,

I was a member of the board of directors of the Central Transportation Company, and was actively interested in the management and conduct of its affairs. Under the contract of lease between the Pullman Company and the Central Transportation Company, the Pullman Company was paying the former an annual sum or rental, as it might be called, of two hundred and sixty-four thousand dollars a year; this sum was the consideration for a certain demised sleeping-car property and assigned patent rights and sleeping-car contracts with certain railroads, among others, a contract with the Pennsylvania Railroad Co. In 1883, the contract then existing between the Pullman Company and that railroad Co. for running sleeping cars on its lines was to expire on the 27th of January, 1885. Long before that date, and some time in 1883, it had become known to us all,—I mean both the Pullman Company and the Cen-
126 tral Transportation Co.—by information from the Pennsylvania Railroad people, that that contract would not be renewed, and that no other contract would be made upon like terms. The Pennsylvania people claimed that it had become an onerous contract to them. In the meantime substantially all the other contracts with railroads assigned by the original lease, had expired, and had not been renewed, because no contracts in renewal of them could be obtained. The Baltimore & Ohio, for example, had refused to renew its contract, and was operating its own sleeping cars.

As time went on it became entirely obvious that no new contract with the Pennsylvania Co. could be made upon such terms that the Pullman Company could possibly earn a net revenue of two hundred and sixty-four thousand dollars per annum. The directors of the Central Transportation Co. gave careful attention to this subject, and became entirely satisfied that such was a fact, and that if the lease with the Pullman Company was kept in force at all it could only be done by a very great reduction in the rental to be paid the transportation Co. At length, and some time late in the summer, or in the fall of 1883, and under these circumstances, Mr. Pullman, the president, and other officers of the Pullman Company announced to us that the Pullman Company was going to exercise a right given to it in a section of the original lease designated as "eighth," to declare the lease null and void and surrender the property demised thereby for the purpose of putting an end to that lease, and terminating the rental paid thereunder, because they were apprehensive that it would be impossible for them to make any new contract with the Pennsylvania road upon such terms that they could afford to pay rental to the transportation Co.

127 It appeared to all the directors of the transportation Co. that the canceling of the lease and surrender of the property would be very unfortunate to their interests, and that it would undoubtedly be better for their company and for the Pullman Company to reduce the rental to be paid by the Pullman Company to such figure as should be made necessary by the terms of such contract as could be obtained for the Pullman Company from the Pennsylvania Railroad Co., and so keep the operation of the Pennsylvania lines, and also keep the lease in force, and the officers of the transportation

Co. opposed the purpose of the Pullman Company to annul the lease, and urged them to go on and pursue their negotiations for a contract with the railroad Co., with the understanding that the rental of two hundred and sixty-four thousand dollars per annum in the lease should cease at the expiration of the then current Pennsylvania contract, namely, on the 27th of January, 1885, and that the rent or compensation to be paid thereafter to the Central Transportation Co. should be some fair and reasonable part of the net earnings that could be made by the Pullman Company under such contract as it should be able to make with the railroad Co. Mr. Pullman stated repeatedly to the officers of the Central Transportation Co. that unless this was definitely understood the Pullman Company could not go on at all, but must cancel the lease and extinguish the rental under it. The parties had before them, and had expressly in mind the provisions of the latter part of said section "eighth" in the original lease, and it was their idea and intention, and such was the understanding between us and the Pullman Company, that the rate of rental after the expiration of the exist-
128 ing railroad contract should be governed by the terms of that part of said section "eighth," and be in pursuance of those terms, and in execution of that provision a part, as aforesaid, of the net earnings therein referred to. Negotiations upon this subject were continued over a considerable period with frequent interviews, and upon this understanding the Pullman Company abandoned its purpose of terminating the lease, and proceeded to negotiate a new contract with the Pennsylvania road.

Affiant says that all the members of the board of directors of the Central Transportation Company were entirely satisfied, not only from the statements of the Pullman Company, but from their own independent information and knowledge, that it was true that after the expiration of the existing Pennsylvania Railroad contract it would be absolutely impossible for the Pullman Company to earn, under any new contract that could be had, any such net sum as two hundred and sixty-four thousand dollars a year; that the officers of the Pullman Company were perfectly frank and open in the exhibition of their accounts, and gave the officers of the Central Transportation Company every opportunity of which they desired to avail themselves to verify their statements, but there could be no doubt whatever of the fact, and there was none, that with the expiration of the Pennsylvania Railroad contract then existing the net revenue that could be earned under such terms of the contract of lease, must, and would, fall far below the sum of two hundred and sixty-four thousand dollars per annum. The officers of the transportation Co. knew, and learned from officers of the Pennsylvania Railroad Co., that Mr. Pullman was having great difficulty in negotiating with them such a contract as he
129 could afford to make for his company, and the various negotiations that transpired between the Pullman officers and those of the railroad Co. were reported continually by the Pullman officers to the Central Transportation Co.'s officers, and were made the subject of discussion, and it was understood that the

officers of the Central Transportation Co. should give, and they did give, to the Pullman Company all the assistance in their power in the procuring of a new contract. I do not recall with distinctness interviews of my own with the Pennsylvania Co. officers, but I knew and learned from Mr. Cottringer, and from Mr. Lockard, and from Mr. Wolverton and others, as well as from Mr. Pullman, of the difficulties which he was having in the negotiation of the contract. We all knew fully about the matter. As the negotiations for the new contract proceeded, various sketches and drafts of the contract as proposed were made from time to time, and as modifications and alterations were made new drafts were made, and were printed and submitted to us—I mean the officers of the transportation Co.—and in the course of this matter I think as many as twenty such drafts or sketches of the terms of contract, as it advanced from stage to stage, were made and printed, and submitted to us, and we were thus informed of all the conditions of the new contract at its various stages. Ultimately a contract was completed with the railroad Co., and it was approved by the directors of the Central Transportation Co., and ultimately, also, and in February, 1885, an agreement was come to between the Central Transportation Co. and the Pullman Company as to the annual rental to be paid to the Central Transportation Co.; but this sum agreed upon included also
130 a right of exchange of stock of the transportation Co. for stock of the Pullman Company, and was, with other matters modifying the contract of lease, reserved for the stockholders, but during all of the period of the negotiations above referred to there was no doubt or uncertainty in the understanding between the Pullman and transportation companies that the original rental of two hundred and sixty-four thousand dollars could not be earned after the expiration, in January, 1885, of the existing railroad contract, and that that rental was to end with the expiration of that railroad contract, and that the rental to be paid after that time must be, and was to be, a fair and reasonable share of what could be earned under the contract that should be made eventually with the railroad Co. The actual amount of this rental, of course, had to remain to be fixed and made definite after it was ascertained what the terms of the railroad contract would be. This was the assumed fact that underlay all the negotiations of the parties, namely, those between the Pullman Company and the Central Transportation Co., and those with the railroad Co.

NOTE: Four words at bottom of second page and fourteen words at top of third page erased before signing and qualifying.

WM. S. LANE.

Sworn and subscribed before me this twenty-sixth day of March, A. D. 1887.

[NOTARIAL SEAL.] OSCAR R. MEYERS,
Notary Public.

131 Circuit Court of the United States, Eastern District of Pennsylvania.

PULLMAN PALACE CAR COMPANY
vs.
CENTRAL TRANSPORTATION CO. } Bill in Equity.

STATE OF PENNSYLVANIA,
City and County of Philadelphia, } *ss:*

William J. Howard, of the city of Philadelphia and State of Pennsylvania, being duly sworn, on oath, says:

That he is by profession a lawyer; that during the years 1883, 1884 and a part of 1885, he was a director and stockholder in the Central Transportation Co., and some years prior to that had been president of said company, and was conversant with all its business relations with the Pullman Palace Car Company. I have carefully read the affidavit made by Mr. William S. Lane of the city of Philadelphia, entitled in this cause, and subscribed and sworn to on the twenty-sixth day of March, 1887, and I fully concur in all the statements made therein, and know them to be true. All the matters therein stated occurred within my personal knowledge. A long time before the expiration of the contract with the Pennsylvania Railroad Company, mentioned in the affidavit of Mr. Lane, and in the bill of complaint filed in this cause, which contract expired on the 27th day of January, 1885, it had become fully known to the Pullman Palace Car Company and its officers, and to the Central Transportation Co., and its officers and directors, that that
132 contract would not be renewed after its expiration. The officers and directors of the Central Transportation Co. derived their information upon this subject directly from the officers of the Pennsylvania Railroad Company. The railroad company considered that that contract was, or had become, in the course of the development of business of the railroad company, an onerous one to them, and the Pullman Company and the transportation Co. were notified that it would not be renewed, and that no other contract would be made in place of it at all as advantageous to the Pullman Company as that one; indeed, it became doubtful, and we were all very apprehensive, as to whether any new contract could be secured at all under which the Pullman Company could afford to perform the service, and to pay any rental to the transportation Co. under its lease. The railroad company, at one time, suggested that it thought of providing its own equipment, and operating its own sleeping-car service, but even when that purpose had been laid aside it was doubtful whether any contract could be made sufficiently profitable to the Pullman Company to enable it to pay any rental at all to the transportation Co. All this was perfectly well known equally to the Pullman Company and to the transportation Co., and was a subject of continual discussion in the board of the transportation Co. as a fact generally known to be true.

It was equally well understood, that under any new contract

with the railroad company that could be had it would be absolutely impossible for the Pullman Company to continue the rate of rental originally reserved in the lease, and that the transportation Co. could not expect to receive that rental after the expiration of the then current railroad contract. It was plain to us all, and
133 we all recognized its truth as a matter of course, that the only alternative open to us to avoid the canceling of the lease was the fixing of a new and a reduced rental under provisions which were contained in the lease.

Most of the contracts assigned by the original lease had already expired, and had not been renewed, and the Pennsylvania Railroad contract was substantially the only one remaining, and with the expiration of the Pennsylvania contract it was perfectly apparent that the revenue would fall below the sum of two hundred and sixty-four thousand dollars a year. The board of the Central Transportation Co. became entirely satisfied of that fact upon examination and inquiry.

The officers of the Pullman Company were entirely frank and open with us, and placed at our disposal all sources of information of which we desired to avail ourselves, and the fact of which I speak,—that the rental must fall below two hundred and sixty-four thousand dollars a year after the expiration of the Pennsylvania contract,—was one of which we had no doubt, and was a matter which was fully agreed to because we were satisfied it was not open to controversy.

All these matters were known and understood by us, that is, by the directors, officers and stockholders of the Central Transportation Co. Some time in the spring of 1884, a committee of the board of directors of the Central Transportation Co. was appointed by that board to communicate and hold the negotiations with the officers and representatives of the Pullman Company with reference to their future relations, and with reference to the procuring of the future contract with the Pennsylvania road. I was a member of
134 that committee; Mr. Lane was a member and the chairman of it; Mr. John A. Wright was also a member of it; I am not sure whether Mr. J. C. Bingham was a member of it, but I think he was as president of the company, and he continually met with the committee and took part in its transactions. All the negotiations that transpired, and all the arrangements that were made, and understandings and agreements come to, from time to time, with the Pullman Company were reported by the committee to its board of directors.

When it became apparent to the Pullman Company that the railroad company contract would not be renewed and that no new contract nearly as advantageous could be obtained in its place, the officers of the Pullman Company informed the committee above mentioned, and, through them, the board of directors, of the transportation Co., that the Pullman Company had come to the decision to exercise the right given in a section of the original lease with the Central Transportation Co., designated therein as "eighth," and to declare the said contract of lease null and void, and surrender

the property demised thereby to the lessor. This decision of the Pullman Company to annul the lease was definitely signified, as I have said, to the Central Transportation Co. We all felt, on the part of the Central Transportation Co., that the cancellation of the lease was to be deplored, and would be unfortunate in its results to the transportation Co. We felt sure that the Pennsylvania Railroad Company would not contract with us for the operating of sleeping cars on its lines, because we were in no condition to take up that service, for we had no organization nor equipment for that purpose, nor connections with other roads. We believed it
135 would be better that the Pullman Company should make the best terms that it could with the railroad company and continue to operate the sleeping-car service, and pay the Central Transportation Co. a share or portion of the net earnings that might be made under such contract, and, accordingly, we opposed the purpose announced of the Pullman Company to annul the lease, and urged that negotiations for a new contract should be prosecuted and such contract made. It was in view of our urgency that the Pullman Company should make the best terms that it could, and not annul the lease, and of the fact that a very great reduction of the rental must of necessity be made, and in view of the right insisted upon by the Pennsylvania Railroad Co. to annul the contract under certain conditions, or to become interested in it from time to time, which rendered the permanency and duration of our income very uncertain, and in view of the difficulty we might have in explaining all this matter fully to the body of the stockholders, that the proposition hereafter referred to originated of making an exchange of the transportation Co.'s stock for Pullman stock.

The representatives of the Pullman Company distinctly stated again and again that they could not think of proceeding under the lease if any claim was to be made, under any circumstances, of a continuance of the original rental of two hundred and sixty-four thousand dollars a year after the expiration of the then current Pennsylvania Railroad contract, because, after that time, it would be utterly impossible to earn any such amount of annual income. In view of this, and of the provisions of the section of said lease designated as "eighth" aforesaid, a definite understanding
136 and agreement was come to between us—I mean the committee and directors of the Central Transportation Co. and the representative officers of the Pullman Company—that the Pullman Company would put aside its purpose of annulling the lease, and would go on and negotiate a new contract with the railroad company; that the old rental of two hundred and sixty-four thousand dollars reserved in the lease should cease and determine with the expiration of the then current Pennsylvania contract; that the rental to be paid thereafter should be governed by the provisions in the last clause of said "section eighth," and be a share or portion of the net earnings that might be made under such new contract as should be obtained from the Pennsylvania Railroad Company.

It was, of course, impossible, to specify the amount of such rental until the terms of that contract should be eventually settled, and

the fixing of that amount had to be postponed—as it was postponed—until the terms of the new railroad contract should be ascertained. It was further understood at that time, from some propositions that had been made for exchange of stock of the transportation Co. for the Pullman Co.'s. and from some claims made by the railroad company insisting that the new contract should provide for the right on their part to purchase an interest in the business of the sleeping car company, from time to time, that some distinctive changes or modifications in the terms of the lease itself might have to be made, but these matters were postponed, as of necessity they must be, until the terms of the railroad contract should be definitely settled and ascertained; but, in the meantime, it was settled and agreed, as I have stated, that the old rental should terminate
137 with the expiration of the then current railroad contract, and that a new rental, based upon the amount that could be earned under the new contract, should be substituted for it.

A written contract was ultimately made and approved by the Central Transportation Co. directors, dated the 27th day of February, 1885, and the rate of rental was specified therein as having been approved by the board of directors of said transportation company, coupled with certain modifications of the lease which are provided for therein; and an exchange of stock is provided for in connection therewith, as an element in the rental agreed to be paid. This particular contract was, by resolution of the directors, reserved for the consideration and approval of the stockholders of the Central Transportation Co., but it was our definite understanding that if that particular contract should fail and not be approved by the stockholders, it would then remain only to adjust and settle in some other way a rental based upon the agreement hereinbefore stated, and upon the provisions of said "section eighth," and being a part or share of the actual net earnings under the sleeping-car contract with the Pennsylvania Railroad Company made with the Pullman Company, but a right to recur to the original rental of two hundred and sixty-four thousand dollars a year, in any event whatever, was never contemplated.

The obligation on the part of the Central Transportation Company to accept the diminished rental existed under the "eighth" clause of their contract. The board of directors were fully satisfied that the contract made by the Pullman Company with the Pennsylvania Railroad Company would result in very largely reduced net
138 earnings, and that our only alternative was to fix what would be a fair proportion of that income to be paid as a rental to the transportation company in lieu of the two hundred and sixty-four thousand dollars; and the board of directors of the transportation company had the advantage of all the accounts and information that the Pullman could give them, and every other possible source of information to enable them to determine what such fair proportion of the net earnings would be, and we came to the conclusion that sixty-six thousand dollars per annum, as expressed in the agreement, would be such fair share.

Under the privilege given in this contract, I exchanged my stock

for the Pullman stock, and have since learned that a large amount, several thousand shares, were likewise exchanged before this contract was rejected by the stockholders. Speaking on my own behalf, I made the exchange of my stock with the understanding, in my own mind, that if this particular contract should not be approved by the stockholders it would remain for them to ascertain and settle in some other way what share of the net earnings under the new Pennsylvania Railroad contract would be the just and equitable proportion belonging to the transportation company.

W. J. HOWARD.

Subscribed and sworn to before me this 2d day of April, A. D. 1887.

W. W. DOUGHERTY,
Notary Public.

[NOTARIAL SEAL.]

139 In the Circuit Court of the United States for the Eastern District of Pennsylvania.

PULLMAN'S PALACE CAR COMPANY
vs.
THE CENTRAL TRANSPORTATION COMPANY. } Bill in Chancery.

STATE OF PENNSYLVANIA,
City and County of Philadelphia, } *ss:*

John A. Wright, being duly sworn, on oath says that he is a resident of the city of Philadelphia and has been so for many years last past; that during the years A. D. 1883, 1884 and part of 1885, he was a stockholder and director of the Central Transportation Company, and actively participated in the management of its affairs; that he was a member of the committee of the board of directors to negotiate and arrange the relations of the Central Transportation Company with the Pullman Palace Car Company; that said committee was appointed some time in the spring of 1884 and that he took part in all those negotiations, and that the said committee from time to time reported all its doings to the board of directors; that he has carefully read the affidavit of William S. Lane made and entitled in this cause and subscribed and sworn to on the twenty-sixth day of March, 1887; that his remembrance of the matters and things therein stated is very distinct, and that the statements of said affidavit are substantially true and correct statements of the matters and things therein set forth.

JOHN A. WRIGHT.

Subscribed and sworn to before me this 2d day of April, A. D. 1887.

W. W. DOUGHERTY,
Notary Public.

[NOTARIAL SEAL.]

140 Circuit Court of the United States, Eastern District of Pennsylvania.

PULLMAN'S PALACE CAR COMPANY
vs.
CENTRAL TRANSPORTATION COMPANY. } Bill in Equity.

STATE OF ILLINOIS, }
County of Cook, } *ss:*

George M. Pullman, being duly sworn, on oath, says: That for the period of about two years before the expiration of the contract mentioned in the bill of complaint in this cause, between Pullman's Palace Car Company and the Pennsylvania Railroad Company, dated the 27th day of January, 1870, he was given to understand, and was substantially informed by the officers of the Pennsylvania Railroad Company, that it was their purpose not to renew the said contract upon its expiration; that they had, upon investigation, formed the opinion that said company could provide itself with the necessary equipment and service upon its own lines under conditions much more profitable to the railroad company than those contained in the current contract above mentioned; and that this fact would have to control the conditions of any new contract which the railroad company might consent to make with the Pullman Company. Affiant was given to understand by the representatives of said railroad company that it could procure cars and perform this service itself at such rates of expense, that it need not and would not consent to terms of a contract with the Pullman Company, under which that company should be able to net a revenue of more than six per cent. (6%) upon the
141 capital it would have to invest in that business. The representatives of the railroad company claimed that it would not cost the company more than five per cent. (5%) upon the capital employed in that service. The Pullman Company was at that time paying to the Central Transportation Company, under its contract of lease set out in the bill of complaint, dated the 17th day of February, 1870, the annual sum of two hundred sixty-four thousand dollars ($264,000), being 12 per centum upon the total capital stock of said transportation company, and it became perfectly obvious to the officers of the Pullman Company, and equally to those of the transportation company, which they freely admitted, that under any new contract with the railroad company founded upon such a basis as that suggested by its officers, it would not only be impossible for the Pullman Company to continue that rate of payment, but that it was very doubtful whether under any contract it could make with the railroad company, it could afford to operate the sleeping-car service properly, and pay any rental whatever under its lease to the Central Transportation Company. It was perfectly obvious and known to all parties that at the expiration of the then current railroad contract, the total revenue, as referred to in section "eighth" of said lease, must and would fall far below $264,000 per annum. Under

these circumstances, the officers of the Pullman Company made up their minds to exercise the right given in a section of said lease, designated therein as "eighth," and to declare the said contract of lease null and void, and surrender the property demised thereby to the lessor. Instructions were accordingly given to the general counsel of the Pullman Company to prepare such formal
142 communications to the transportation company as might be necessary for that purpose, and to the auditor to prepare such statements as might be necessary, showing the conditions of the accounts and of the demised property, and giving such other information as might be necessary in the premises, and to be ready to furnish all such information in these and other matters germane to the proceeding as might be required by the said transportation company. Thereupon, this purpose and decision was communicated to the board of directors of said Central Transportation Company, and this affiant, and the then assistant general counsel of the Pullman Company, and its auditor, Mr. C. H. Davie, went together to Philadelphia to meet the officers and representatives of the said transportation company, in order to arrange the details of a surrender of the demised property.

A great many interviews and discussions were held between the officers of the Pullman Company and the officers and directors of the transportation company, upon this subject. A committee of the board of directors of the Central Transportation Company had been appointed by that board, and most of the interviews, negotiations and agreements between the Pullman Company and the Central Transportation Company were had with this committee of the board, and this committee as we were informed by them, reported their dealings and transactions from time to time to the board of directors.

In this manner all the matter above stated was made from time to time the subject of discussion between this affiant and other officers or representatives of the Pullman Company, and the
143 representative officers of the transportation company; and all information on the subject of a new contract, possessed by the Pullman Company, was communicated to the officers of the transportation company; and this affiant had reason to believe, and believes, that officers of the said transportation company did themselves derive similar information directly from the officers of the Pennsylvania Railroad Company; that in any event the situation of matters as above detailed was as fully known to the officers of the transportation company as to the Pullman Company, and was a matter as to the actual truth of which there was no controversy or dispute whatever; on the contrary, it was perfectly known and admitted to be true. For various reasons it would have been more satisfactory to the Pullman Company to continue its service on the lines of the Pennsylvania Railroad Company under proper conditions, and the officers of the transportation company were very solicitous to have that service continued by the Pullman Company under the section called "eighth" of its lease, rather than to have the demised property surrendered; and to that end strenuously op-

posed the purpose of the Pullman Company to annul the lease, and urged upon this affiant to persist in the efforts of the Pullman Company to procure a contract with the railroad company, under which it might go on to act under the lease upon some fair and reasonable terms with the transportation company, which should be based upon the net revenues that might be earned, according to the last clause of said section eighth; and the officers of said transportation company, and its directors, stated to and assured this affiant that, in such case, they would themselves attempt to aid him, and
144 would give him all assistance in their power in procuring the most favorable contract possible from the said railroad company. As between the said railroad company and the Pullman Company, there were some reasons why the said railroad company felt it desirable to arrange with the Pullman Company for the sleeping-car service over its lines, rather than to perform that service itself; such reasons growing in part from the fact that the Pullman Company was performing such service on the lines of nearly all the railroads with which the Pennsylvania lines were in connection; and it was perfectly well understood and assented to as a fact by the representatives of the Central Transportation Company that the Pennsylvania Railroad Company would not contract with said transportation company for the performance of that service on its lines. Accordingly, this affiant and the other officers and representatives of the Pullman Company, upon the request of the officers and representatives of the said transportation company, and upon their assurances that if the Pullman Company would give up its purpose of ending the lease, and would arrange a new contract with the Pennsylvania Railroad Company, and would operate its service upon the railroad company's lines, and continue under the provisions of said section "eighth" the lease with the said transportation company, the said transportation company would and should arrange and agree with the Pullman Company upon some annual sum, or some rate of payment under the lease, instead of the original rental specified therein, and that the original rental of $264,000 specified in the lease, should cease and determine absolutely with the expiration of the said railroad contract, to wit: on the 27th day of January, 1885, and should
145 never thereafter be demanded; and that the amount to be paid after the expiration of the then current railroad contract should be governed by the terms of such new contract as might be made with the railroad company, and be determined by the limitation contained in the last clause of said section eighth, namely: that it should be a "sum or share of the net revenues from the remaining lines of roads," according to the terms of said lease; it was definitely and explicitly so understood and arranged between the parties; and the Pullman Company did abandon the proceeding it proposed and had commenced for annuling the lease, and pursued with the concurrence of the transportation company and its co-operation, the negotiations of a new contract with the Pennsylvania Railroad Company. From the outset of the discussions with the representatives of the transportation

company, in view of the known fact that no contract on terms as favorable as those of the old contract, or anything like them, could be made, and with express reference to the provisions in the original lease in section eighth, relating to a change in the compensation under the lease, in case of a reduction of the net revenue that could be earned, I told them that it was absolutely necessary that the rental of $264,000 a year must be extinguised from the expiration of the railroad contract, namely: the 27th day of January, as aforesaid, before the Pullman Company could come to terms with the railroad company in the matter of a new contract. This was repeated again and again in various interviews and discussions, and the explicit understanding and agreement I have above stated, was arrived at in consequence. Enough was then known to make it certain that under the terms of any contract possible with the railroad company, it was no longer possible for the Pullman
146 Company to earn from all the then remaining of the lines specified in said lease, including the lines of the Pennsylvania Railroad Company, a net revenue equal to $264,000 a year, or anywhere near that sum. This result was arrived at in the course of a great many interviews and discussions of the whole situation between the officers of the transportation and those of the Pullman Company. It was based upon the most explicit understanding and agreement that after the expiration of the then current Pennsylvania contract, the Pullman Company should not and could not pay, and was not expected to pay, the original rental reserved in its lease with the transportation company, and that it should not be claimed by the Central Transportation Company. This was the fundamental fact upon which all the negotiations and discussions were based, and upon which the agreement and understandings come to between the Pullman and the transportation companies, as above stated, were founded. The officers of the Central Transportation Company understood and knew that the Pullman Company was proceeding to annul the lease in order to extinguish that rental from and after the expiration of the Pennsylvania contract, because the Pullman Company had distinctly communicated to them and the Central Transportation Company its desire to that effect, and it was instead of the annulment of the lease by the Pullman Company and in lieu of that and in lieu of the old rental, and with the explicit intention and agreement not to keep the original rental named in that lease in force, that it was determined and agreed to pursue the negotiations for a new contract with the railroad company, and to adjust a rental to be determined by the last clauses of said section 8th. The understanding was unambiguous and complete, and the Pullman Company
147 and its officers were given that understanding by the Central Transportation Company and its officers; and the agreement was complete that from and after the expiration of the then existing Pennsylvania contract the rental specified in the lease of $264,000.00 a year, should and of necessity must end, and should not thereafter be demanded or claimed by said transportation company.

Upon this basis thus settled that the original rental was at an end, and that the future rental was to be governed, as above stated, by the provisions of said section 8th, the Pullman Company proceeded to negotiate and settle the terms of a contract with the Pennsylvania Railroad Company.

Subsequently and after protracted negotiations with the Pennsylvania Railroad Company it became ascertained and known upon what terms and conditions the Pullman Company could make a contract with the Pennsylvania Company. In the meantime, however, the contract with the railroad company expired on the 27th of January, 1885, but the Pullman Company continued to operate its cars over the lines of that road, having no other contract with said railroad company than the understanding with its officers that the time subsequent to said 27th day of January should be covered by the terms of the new contract, when made, and having the understanding and agreement with the said Central Transportation Company, which is above stated, and no other; but frequent interviews, discussions and negotiations continued between the representatives of the Pullman Company and those of the said transportation company, including the committee aforesaid, for the purpose of determining what amount of rental and in what form should
148 be paid in future to the transportation company. In these interviews were proposed and discussed not only the amount of this rental, but also certain modifications and changes in the relations of the Pullman Company and the transportation company under other terms of their lease. Proposition for exchange of stock of the transportation company for that of the Pullman Company had been made and was under consideration: the railroad company insisted upon the right in certain conditions to terminate the new contract altogether; the railroad company also insisted upon the right from time to time to purchase an interest in the cars and equipment embraced in its new contract, and also to reduce the sleeping-car rates under certain conditions, whereby the revenues of the Pullman Company would be affected and reduced. That this would be insisted upon by the railroad company had been known for a long time, and modifications of the lease were necessary to adjust it to the happening of such events, and provision for these things was made in the terms of a contract which was afterwards made between the Pullman and the transportation companies, dated the 27th day of February, 1885, and shown in Exhibit C to the bill of complaint filed in this case. In that contract a rate of rental is specified as having been agreed upon and approved by the board of directors of said transportation company, and modifications of the lease are provided for as above stated, and an exchange of stock is provided for in connection with, and as an element in, the rental agreed upon to be paid.

GEO. M. PULLMAN.

Subscribed and sworn to before me, the undersigned, a notary public in and for said State and county, this April 12th, A. D. 1887.

AMBROSE RISDON,

[NOTARIAL SEAL.] *Notary Public.*

149 Circuit Court of United States, Eastern District of Pennsylvania.

PULLMAN PALACE CAR COMPANY
vs.
CENTRAL TRANSPORTATION COMPANY. } Bill in Equity.

STATE OF NEW YORK,
City and County of New York, } ss:

Horace Porter, of the city, county and State of New York, being duly sworn, on oath says: That he is now and has been for many years past, and for all the time covered by the following affidavit, the vice-president of the Pullman's Palace Car Company, and as one of the executive officers of that company has been actively engaged in the management of its affairs. That he has read the bill of complaint filed in this cause, and knows the contents thereof, and that the allegations of said bill, so far as they relate to matters within the knowledge of this defendant, are true; that for the period of about two years before the expiration of the contract mentioned in the bill of complaint in this cause, between Pullman's Palace Car Company and the Pennsylvania Railroad Company, dated the 27th day of January, 1870, he was substantially informed by the officers of the Pennsylvania Railroad Company that it was their purpose not to renew the said contract upon its expiration; that they had formed the opinion that said railroad company could provide itself with the necessary equipment and service upon its own lines under better conditions than those contained in the current contract
150 above mentioned; and that if they should consent to make a new contract at all, this fact would have to control the conditions of it. Affiant was given to understand by the representatives of said railroad company that it could procure equipment and perform this service itself at a rate of expense not exceeding five per cent. upon the capital; that it need not and would not consent to terms of a contract with the Pullman Company under which that company should be able to net a revenue of more than six per cent. (6%) upon the capital it would have to invest in that business. The Pullman Company was at that time paying to the Central Transportation Company, under its contract of lease set out in the bill of complaint, dated the seventeenth day of February, 1870, the annual sum of two hundred sixty-four thousand dollars ($264,000), being 12 per centum upon the total capital stock of said transportation company, and it became perfectly obvious to the officers of the Pullman Company, and equally to those of the transportation company, which they freely admitted, that under any new contract with the railroad company, founded upon such a basis as that suggested by its officers, it would not only be impossible for the Pullman Company to continue that rate of payment, but that it was very doubtful whether under any contract it could make with the railroad company, it could afford to operate the sleeping-car service properly, and pay any rental whatever under its lease to the Central Transporta-

tion Company. It was perfectly obvious and known to all parties that at the expiration of the then current railroad contract, the total revenue, as referred to in section "eighth" of said lease, must and would fall far below $264,000 per annum. Under these circumstances, the officers of
151 the Pullman Company made up their minds to exercise the right given in a section of said lease, designated therein as "eighth," and to declare the said contract of lease null and void, and to surrender the property demised thereby to the lessor. This affiant, together with Mr. Pullman, the president of the company, announced this decision and purpose to the representatives of the transportation company, and they, together with the then assistant general counsel of the Pullman Company, Mr. Bacon, and the auditor of the company, Mr. C. H. Davie, met the officers and representatives of the transportation company at Philadelphia with reference to this purpose and to discuss the details of a surrender of the demised property. A great many interviews and discussions were held between the officers of the Pullman Company and the officers and directors of the transportation company upon this subject. A committee of the board of directors of the Central Transportation Company had been appointed by that board, and most of the interviews, negotiations and the agreements heretofore mentioned between the Pullman Company and the Central Transportation Company, were had with this committee of the board, and this committee as we were informed by them, reported their dealings and transactions from time to time to the board of directors where they were approved. In the course of these discussions all information possessed by the Pullman Company as to the prospect of being able to make any new contract at all with the railroad company, or as to the terms upon which a contract could be made, if one could be made at all, was communicated to the rep-
152 resentatives of the transportation company; and this affiant has reason to believe, and believes, that officers of the said transportation company did themselves derive similar information directly from the officers of the Pennsylvania Railroad Company; that in any event, the situation of matters as above detailed was as fully known to the officers of the transportation company as to the Pullman Company, and was a matter as to the actual truth of which there was no controversy or dispute whatever; on the contrary, it was perfectly known and admitted to be true. For various reasons it would have been more satisfactory to the Pullman Company to continue its service on the lines of the Pennsylvania Railroad Company under proper conditions, and the officers of the transportation company were very solicitous to have that service continued by the Pullman Company under the section called "eighth" of its lease, rather than to have the demised property surrendered, and to that end strenuously opposed the purpose of the Pullman Company to annul the lease, and urged upon this affiant to persist in the efforts of the Pullman Company to procure a contract with the railroad company, under which it might go on to act under the lease upon some fair and reasonable terms with the transportation company,

which should be based upon the net revenues that might be earned according to the last clause of said section "eighth," and the officers of said transportation company and its directors stated to and assured this affiant, that in such case they would themselves attempt to aid him, and would give him all assistance in their power in procuring the most favorable contract possible from the said railroad company. As between the said railroad company and the Pull-
153 man Company, there were some reasons why the said railroad company felt it desirable to arrange with the Pullman Company for the sleeping-car service over its lines, rather than to perform that service itself; such reasons growing in part from the fact that the Pullman Company was performing such service on the lines of nearly all the railroads with which the Pennsylvania lines were in connection, and the railroad company finally decided to make a new contract with the Pullman Company, if the terms of such a contract could be agreed upon between them; and it was perfectly well understood and assented to as a fact, by the representatives of the Central Transportation Company, that the Pennsylvania Railroad Company would not contract with said transportation company for the performance of that service on its lines. Accordingly, the officers and representatives of the said transportation company gave their assurances to the representatives of the Pullman Company, that if the Pullman Company would give up its purpose of ending the lease, and would arrange a new contract with the Pennsylvania Railroad Company, and would operate its service upon the railroad company's lines, and continue to act under the provisions of said section "eighth" of the lease with the said transportation company, the said transportation company should and would agree with the Pullman Company upon some different annual sum, or some new rate of payment under the lease, instead of the original rental specified therein, and that the original rental of $264,000 specified in the lease should cease and determine absolutely, with the expiration of the said railroad contract, to wit: on the 27th day of January, 1885, and should never thereafter be demanded; and that
154 the amount to be paid after the expiration of the then current railroad contract should be governed by the terms of such new contract as might be made with the railroad company, and represent some portion of the net earnings made thereunder, and be determined by the limitation contained in the last clause of said section eighth, namely, that it should be a "sum or share of the net revenues from the remaining lines of roads." In reliance upon those assurances, the Pullman Company yielded to the request of the said transportation company, and it was definitely and explicitly so understood and arranged between the parties, and the Pullman Company did accordingly put aside the proceeding it proposed, and had commenced for annulling the lease, and pursued, with the concurrence of the transportation company and its co-operation, the negotiation of a new contract with the Pennsylvania Railroad Company. From the outset of the discussions with the representatives of the transportation company, in view of the known fact that no contract on terms as favorable as those of the old con-

tract, or anything like them, could be made, and with express reference to the provisions in the original lease in section eighth, relating to a change in the compensation under the lease, in case of a reduction of the net revenue that could be earned, Mr. Pullman and the other representatives of the Pullman Company including Judge Lochrane, then the general counsel of the Pullman Company, told them that it was absolutely necessary that it must be definitely understood that the rental of $264,000 a year must be extinguished from the expiration of the railroad contract, namely, the 27th day of January, as aforesaid, before
155 the Pullman Company could come to terms with the railroad company, or proceed with it at all in the matter of a new contract. This was repeated again and again in various interviews and discussions, and the explicit understanding and agreement I have above stated was arrived at in consequence. Enough was then known to make it certain that under the terms of any contract possible with the railroad company, it was no longer possible for the Pullman Company to earn from all the then remaining of the lines specified in said lease, including the lines of the Pennsylvania Railroad Company, a net revenue equal to $264,000 a year, or anywhere near that sum. This result was arrived at in the course of a great many interviews and discussions of the whole situation between the officers of the transportation and those of the Pullman Company. It was based upon the most explicit understanding and agreement that after the expiration of the then current Pennsylvania contract, the Pullman Company should not and could not pay, and was not expected to pay the original rental reserved in its lease with the transportation company, and that it should not be claimed by the Central Transportation Company. This was the fundamental fact upon which all the negotiations and discussions were based, and upon which the agreement and understandings come to between the Pullman and the transportation company, as above stated, were founded. The officers of the Central Transportation Company understood and knew that the Pullman Company was proceeding to annul the lease expressly in order to extinguish that rental, from and after the expiration of the Pennsylvania contract; and it was instead of the annulment of the lease by
156 the Pullman Company and in lieu of that, and in lieu of the old rental, and with the explicit intention and agreement that the original rental named in that lease should not be kept in force, that it was determined and agreed to pursue the negotiations for a new contract with the railroad company and to adjust a rental to be determined by the last clauses of said section eighth. The understanding was unambiguous and complete, and the Pullman Company and its officers were given that understanding by the Central Transportation Company and its officers; and the agreement was complete that from and after the expiration of the then existing Pennsylvania contract the rental specified in the lease of $264,000 a year should and of necessity must end, and should not thereafter be demanded or claimed by said transportation company.

Upon this basis thus settled that the original rental was at an

end, and that the future rental was to be governed as above stated by the provisions of said section eighth, the Pullman Company proceeded to negotiate and settle the terms of a contract with the Pennsylvania Railroad Company.

Subsequently, and after protracted negotiations with the Pennsylvania Railroad Company, it became ascertained and known upon what terms and conditions the Pullman Company could make a contract with the Pennsylvania Company. In the meantime, however, the contract with the railroad company expired on the 27th of January, 1885; but the Pullman Company continued to operate its cars over the lines of that road, having no other contract with said railroad company than the understanding with its officers, that the time subsequent to said
157 27th day of January should be covered by the terms of the new contract when made, and having the understanding and agreement with the said Central Transportation Company, which is above stated, and no other; but frequent interviews, discussions and negotiations continued between the representatives of the Pullman Company and those of the said transportation company, for the purpose of determining what amount of rental, and in what form, should be paid in future to the transportation company. In these interviews were proposed and discussed not only the amount of this rental, but also certain modifications and changes in the relations of the Pullman Company and the transportation company, under other terms of their lease. Proposition for exchange of stock of the transportation company for that of the Pullman Company had been made and was under consideration; the railroad company insisted upon the right in certain conditions to terminate the new contract altogether; the railroad company also insisted upon the right from time to time to purchase an interest in the cars and equipment embraced in its new contract, and also to reduce the sleeping-car rates under certain conditions, whereby the revenues of the Pullman Company would be affected and reduced. That this would be insisted upon by the railroad company had been known for a long time, and modifications of the lease were necessary to adjust it to the happening of such events, and provision for these things was made in the terms of a contract, which was afterwards made between the Pullman and the transportation companies, dated the 27th day of February, 1885, and shown in Exhibit C to the bill of complaint filed in this case.

In that contract, a rate of rental is specified as having been
158 agreed upon and approved by the board of directors of said transportation company, and modifications of the lease are provided for as above stated, and an exchange of stock is provided for in connection with and as an element in the rental agreed upon to be paid.

HORACE PORTER.

Subscribed and sworn to before me, this 14th day of April, 1887.

OWEN FITZSIMONS,

[SEAL.] *Notary Public, Kings Co., N. Y.*

Cert. filed in N. Y. Co.

159 In the Circuit Court of the United States for the Eastern District of Pennsylvania.

PULLMAN'S PALACE CAR COMPANY
vs.
THE CENTRAL TRANSPORTATION COMPANY. } In Chancery.

STATE OF ILLINOIS, }
County of Cook, } *ss:*

E. H. Goodman, being duly sworn, on oath says:

I am second vice-president of Pullman's Palace Car Company. From A. D. 1870 to A. D. 1886, I was superintendent for said Pullman Company, of the central division, which included all, or nearly all, of the Pennsylvania system, and it was part of my duties to be, and I was, familiar with the sleeping-car equipment run upon the Pennsylvania Railroad Company lines, and was also familiar with the 119 cars leased by the Central Transportation Company to the Pullman Company, and was familiar with them until the time that they were severally withdrawn from service, and am now familiar with those still in existence.

In June, A. D. 1886, I made a careful examination of the thirty-seven cars originally leased by said defendant to said complainant, and enumerated in Exhibit F in the bill of complaint in the above-entitled cause, for the purpose of ascertaining how much money it would require to put the same into good running order. Such examination was made in connection with a proposed surrender to the defendant of such cars, under the provisions of the lease between defendant and complainant. I am familar with sleep-

160 ing cars, and with the cost of repairs thereto, and after a careful examination estimated that the amount necessary to put said thirty-seven cars in good running condition, and in good repair for that class of cars, was $53,000.

At the time of making such estimate I believed that said thirty-seven cars, even if repaired and put in as good condition as when first demised to complainant in 1870 would be unfit for use and no railroad company would permit such cars to be run over its lines of road as sleeping cars, and I believed that any expenditure of money on such cars would be useless and would be a direct loss to defendant. Such cars, even if so repaired, would be unfit for use as sleeping cars, on account of defects in the original plan and form of their construction. There is no way in which they can be made available for use as sleeping cars under the present requirements of travel and of railroad companies. If such cars as these 119 originally were, were now built new in the style and manner of construction in which they were first constructed, they would not be received for use upon any road in this country as sleeping cars.

I had direct or indirect charge of all the cars mentioned in the second subdivision of said Exhibit F, and know that as the cars originally received by complainant from defendant and numbered as in said paragraph set forth, beginning with number one and

ending with number one hundred and four (104), were retired from service, the cars enumerated in the first part of said paragraph were substituted in place thereof; that as said originally demised cars were retired, the Pennsylvania Railroad Company paid certain amounts to complainant as compensation for the condemnation of said originally demised cars and towards replacing or substituting others in their places, and that in each case the cars substi-

161 tuted as in said second paragraph of said Exhibit F set forth, cost much more than the sum of money so allowed or paid by the railroad company for the retirement or condemnation of the originally demised cars. I have made a careful examination of the books in ascertaining the substitution above and in said Exhibit F set forth of said sixty-three originally demised cars, and while in all instances the substituted car was not put on the same day in which the originally demised car was withdrawn, yet the books of complainant show the proper substitution, and the cars in said Exhibit F declared to be substituted in place of said sixty-three originally demised cars were always considered and treated by the officers of complainant as cars substituted in place of said sixty-three originally demised cars as the same were retired from service.

Nineteen of said originally demised cars, which had been assigned to the Baltimore and Ohio Railroad Company and roads controlled or owned by it, have been destroyed and no cars have been substituted in place thereof. As said nineteen originally demised cars were condemned and retired from service, other cars were put in to fill their places upon the Baltimore and Ohio lines of road, but the cars so put in to fill their places were not substituted therefor, but were cars owned in part by the Baltimore and Ohio road under a partnership arrangement between the Baltimore and Ohio Railroad Company and complainant, and upon the termination of said partnership arrangement the cars were placed in the hands of a receiver by order of court and sold for benefit of the joint owners thereof, in a suit filed for an accounting between the Baltimore and Ohio Railroad Company and complainant.

As before stated, I am thoroughly familiar with the value

162 of sleeping cars and the use to which the same can be put, and believe that if said nineteen originally demised cars that were assigned to the Baltimore and Ohio lines were now reproduced in good repair and running order, they would not be worth $3,000 each.

Only eighty-four of said originally demised cars were run upon the Pennsylvania railroad. As said cars were taken off from said railroad at the demand of said railroad company, and as other of said 119 originally demised cars were taken off other railroads at the demand of said other railroad companies, it was found to be impossible to use said originally demised cars, even if the same were put in good repair and running order, because no railroad company would permit the same to be run on its lines of road, on account of faults in the plan and form of their original construction, and because the requirements of travel called for an entirely different style of car; and the Pennsylvania Company especially

refused to allow, under any circumstances, said originally demised cars to be run upon its lines, in however good repair they might be.

The average value of the sleeping and parlor cars operated by the complainant upon the lines of the Pennsylvania Railroad Company, the Cincinnati, Hamilton and Dayton Railroad Company, the Cincinnati, Indianapolis, St. Louis and Chicago Railroad Company and the Louisville, Cincinnati and Lexington Railroad Company during the year A. D. 1885, was thirteen thousand five hundred dollars ($13,500).

E. H. GOODMAN.

Subscribed and sworn to before me, the undersigned, a notary public in and for said State and county, this April 20th, A. D. 1887.

[NOTARIAL SEAL.] AMBROSE RISDON,
Notary Public.

163 In the Circuit Court of the United States for the Eastern District of Pennsylvania.

PULLMAN'S PALACE CAR COMPANY
vs.
THE CENTRAL TRANSPORTATION COMPANY. } In Chancery.

STATE OF ILLINOIS, }
County of Cook, } *ss:*

Stephen Little, being duly sworn says: I am the auditor of said complainant company; I have made and caused to be made a careful calculation of the gross earnings and expenses of said complainant in operating sleeping and parlor cars upon all the lines of railroad embraced in the present contract existing between said complainant and the Pennsylvania Railroad Company, for the operation of sleeping and parlor cars; in such calculation I have included all the Pennsylvania lines of road enumerated in said contract, except the Allegheny Valley Railroad Company; I have also had such calculation made in three ways, the first of which omits the lines of the Pennsylvania road enumerated in said contract lying south of Baltimore, being the Baltimore and Potomac railroad and the Alexandria and Fredericksburg railroad. The second of said statements includes the same as the first and the Baltimore and Potomac railroad. The third of said statements includes the same as the second and the Alexandria and Fredericksburg railroad. During the year ending January 31st, A. D. 1886, said complainant had in operation upon said lines of railroad, one hundred and ninety-two (192) sleeping and parlor cars, and during said time the earnings and expenses of said one hundred and ninety-two (192) cars on the Pennsylvania lines of railroad mentioned above were as follows:

164 *Earnings on Lines North of Baltimore.*

Gross earnings		$1,010,704 99
Expenses.		
Operating and maintenance	$449,745 29	
Taxes (approximate)	6,000 00	
Repairs on 192 cars	268,938 90	
Depreciation of 5% per annum on 192 cars at $13,500 per car, or $2,592,000.	129,600 00	
		854,284 19
Net earnings		$156,420 80

Earnings on Lines North of Washington.

Gross earnings		$1,053,534 81
Expenses.		
Operating and maintenance	$452,906 44	
Taxes (approximate)	6,000 00	
Repairs on 192 cars	279,976 30	
Depreciation of 5% per annum on 192 cars at $13,500 per car, or $2,592,000.	129,600 00	
		868,482 74
Net earnings		$185,052 07

Earnings on Lines North of Quantico.

Gross earnings		$1,056,053 67
Expenses.		
Operating and maintenance	$453,309 83	
Taxes (approximate)	6,000 00	
Repairs on 192 cars	281,384 71	
Depreciation of 5% per annum on 192 cars, at $13,500 per car, or $2,592,000.	129,600 00	
		870,294 54
Net earnings		$185,759 13

165 I have made a like calculation on the same lines of the Pennsylvania railroad for the year ending June 30, 1886, and the result is as follows:

Earnings on Lines North of Baltimore.

Gross earnings		$1,003,869 37
Expenses.		
Operating and maintenance	$462,493 96	
Taxes (approximate)	6,000 00	
Repairs on 192 cars	306,123 86	
Depreciation of 5 % per annum on 192 cars, at $13,500 per car, or $2,592,000.	129,600 00	
		904,217 82
Net earnings		$99,651 55

Earnings on Lines North of Washington.

Gross earnings		$1,046,632 49
Expenses.		
Operating and maintenance	$466,642 90	
Taxes (approximate)	6,000 00	
Repairs on 192 cars	318,380 52	
Depreciation of 5 % per annum on 192 cars at $13,500 per car, or $2,592,000.	129,600 00	
		920,623 42
Net earnings		$126,009 07

Earnings on Lines North of Quantico.

Gross earnings		$1,049,301 61
Expenses.		
Operating and maintenance	$467,172 34	
Taxes (approximate)	6,000 00	
Repairs on 192 cars	319,944 59	
Depreciation of 5 % per annum on 192 cars at $13,500 per car, or $2,592,000.	129,600 00	
		922,716 93
Net earnings		$126,584 68

166 I have made a like calculation on the same lines of the Pennsylvania railroad for the seventeen months beginning February 1, 1885, and ending July 1, 1886, and the result is as follows:

Earnings on the Lines North of Baltimore.

Gross earnings		$1,403,542 83
Expenses.		
Operating and maintenance	$636,313 53	
Taxes (approximate)	8,500 00	
Repairs on 192 cars	383,942 21	
Depreciation of 5 % per annum on 192 cars at $13,500 per car, or $2,592,000.	183,600 00	
		1,212,355 74
Net earnings		$191,187 09
Or at the rate per annum of		$134,955 59

Earnings on Lines North of Washington.

Gross earnings		$1,467,807 03
Expenses.		
Operating and maintenance	$641,272 08	
Taxes (approximate)	8,500 00	
Repairs on 192 cars	399,547 29	
Depreciation at 5 % per annum on 192 cars at $13,500 per car, or $2,592,000.	183,600 00	
		1,232,919 37
Net earnings		$234,887 66
Or at the rate per annum of		$165,803 05

Earnings on Lines North of Quantico.

Gross earnings		$1,471,812 25
167 *Expenses.*		
Operating and maintenance	$641,904 84	
Taxes (approximate)	8,500 00	
Repairs on 192 cars	401,538 67	
Depreciation of 5% per annum on 192 cars, at $13,500 per car, or $2,592,000.	183,600 00	
		1,235,543 51
Net earnings		$236,268 74
Or at the rate per annum of		$166,777 92

In making the foregoing calculations the items under the head of "Operating and maintenance" are as nearly exact as it is possible to make them. I have approximated the taxes at $6,000 per annum, which is, I believe, a low amount. Some of these taxes have not, however, yet been paid. The company is resisting part of them in the courts.

The repairs on the 192 cars are very low, as compared with the average repairs on all the cars operated by the complainant company. The reason for this low rate of repairs charged in the foregoing statements of the Pennsylvania Railroad system, is that the equipment furnished by said complainant was put in an exceptionally good condition of repair prior to 1885, and that during part of the time to which said statements refer travel upon the Pennsylvania Railroad lines was very heavy, and the cars could not, without inconvenience, be withdrawn from service and sent to the shops for repairs as often as they would be in the ordinary course of business, and the necessary result was to make the immediate expense upon repair account low, but to accumulate, nevertheless, the
168 amount of repairs which must eventually be made, and simply postpone it for the time being with its corresponding expense; with the necessary result that the repair account closely following the time embraced in this affidavit must be largely increased. From a careful examination of the cost of repairs on sleeping cars, as shown on complainant's books, I think that a fair rate at which to reckon repairs on cars is to allow three cents a mile for every mile run by them.

Complainant has contracts with many railroad companies whereby the railroad company agrees to pay for repairs, and in all existing contracts of such nature, the amount agreed upon as compensation for such repairs, is three cents per mile run. Under the contract under which complainant operated cars on the Pennsylvania roads prior to its present contract with said company, the compensation was three cents per mile. The same rate per mile for repairs is now in force on the New York, Lake Erie and Western railroad.

I have made and caused to be made calculations and statements of the gross earnings and expenses of the operation of sleeping cars by complainant upon the lines of road of the Cincinnati, Hamilton and Dayton Railroad Company, the Cincinnati, Indianapolis, St. Louis and Chicago Railroad Company, and the Louisville, Cincinnati and Lexington Railroad Company, similar to the calculations and statements prepared above regarding the Pennsylvania Railroad Company and covering like periods of time. The results of such statements are as follows:

169 *Cincinnati, Hamilton and Dayton Railroad Earnings for the Year Ending February* 1, 1886.

Gross earnings		$23,308 15
Expenses.		
Operating and maintenance	$8,929 92	
Repairs	12,183 21	
Depreciation of 5 % per annum on 4 cars at $13,500 per car, or $54,000	2,700 00	
		23,813 13
Net loss		504 98

Cincinnati, Hamilton and Dayton Earnings for the Year Ending July 1, 1886.

Gross earnings		$28,789 75
Expenses.		
Operating and maintenance	$9,324 96	
Repairs	12,448 17	
Depreciation of 5 % per annum on 4 cars at $13,500 per car, or $54,000	2,700 00	
		24,473 13
Net earnings		$4,316 62

Cincinnati, Hamilton and Dayton Earnings for the 17 Months Ending July 1, 1886.

Gross earnings		$39,840 75
Expenses.		
Operating and maintenance	$12,787 40	
Repairs	17,309 88	
Depreciation of 5 % per annum on 4 cars at $13,500 per car, or $54,000	3,825 00	
		33,922 28
Net earnings		$5,918 47
Or at the rate per annum of		$4,177 68

170 *Cincinnati, Indianapolis, St. Louis and Chicago Earnings for the Year Ending February 1, 1886.*

Gross earnings		$30,343 00
Expenses.		
Operating and maintenance	$10,855 40	
Repairs	10,866 36	
Depreciation of 5 % per annum on 5 cars at $13,500 per car, or $67,500	3,375 00	
		25,096 76
Net earnings		$5,246 24

Cincinnati, Indianapolis, St. Louis and Chicago Earnings for the Year Ending July 1, 1886.

Gross earnings		$30,326 50
Expenses.		
Operating and maintenance	$11,251 20	
Repairs	10,999 53	
Depreciation of 5 % per annum on 5 cars at $13,500 per car, or $67,500	3,375 00	
		25,625 73
Net earnings		$4,700 77

Cincinnati, Indianapolis, St. Louis and Chicago Earnings for the 17 Months Ending July 1, 1886.

Gross earnings		$42,565 75
Expenses.		
Operating and maintenance	$15,779 40	
Repairs	15,375 51	
Depreciation of 5 % per annum on 5 cars at $13,500 per car, or $67,500	4,781 25	
		35,936 16
Net earnings		$6,629 59
Or at the rate per annum of		$4,679 65

171 *Louisville, Cincinnati and Lexington Earnings for the Year Ending February 1, 1886.*

Gross earnings		$15,569 96
Expenses.		
Operating and maintenance	$6,184 08	
Repairs	5,580 36	
Depreciation of 5 % per annum on 3 cars at $13,500 per car, or $40,500	2,025 00	
		13,789 44
Net earnings		$1,780 52

Louisville, Cincinnati and Lexington Earnings for the Year Ending July 1, 1886.

Gross earnings		$12,725 75
Expenses.		
Operating and maintenance	$6,681 96	
Repairs	5,166 60	
Depreciation of 5 % per annum on 3 cars, at $13,500 per car, or $40,500	2,025 00	
		13,873 56
Net loss		$1,147 81

Louisville, Cincinnati and Lexington Earnings for the 17 Months Ending July 1, 1886.

Gross earnings		$21,378 71
Expenses.		
Operating and maintenance	$8,839 32	
Repairs	7,720 26	
Depreciation of 5 % per annum on 3 cars, at $13,500 per car, or $40,500	2,868 75	
		19,428 33
Net earnings		$1,959 38
Or at the rate per annum of		$1,376 74

172 A summary of the above calculations gives us as the net earnings of the operation of sleeping cars upon the Cincinnati, Hamilton and Dayton railroad; the Cincinnati, Indianapolis, St. Louis and Chicago railroad; the Louisville, Cincinnati and Lexington railroad, and the Pennsylvania railroad lines, except the line from Baltimore to Quantico:

For the year ending February 1st, 1886	$162,942 58
For the year ending July 1st, 1886	107,521 13
For the 17 months ending July 1st, 1886	205,685 53
Or, at the rate per annum of	145,189 66

By including the Pennsylvania Railroad line between Baltimore and Washington the net earnings were:

For the year ending February 1st, 1886	$191,573 85
For the year ending July 1st, 1886	133,878 65
For the 17 months ending July 1st, 1886	249,386 10
Or, at the rate per annum of	176,037 12

By including the Pennsylvania Railroad line between Baltimore and Quantico the net earnings were:

For the year ending February 1st, 1886	$192,280 91
For the year ending July 1st, 1886	134,454 26
For the 17 months ending July 1st, 1886	250,767 18
Or, at the rate per annum of	177,011 99

In making the above net earnings there was employed an average of 204 cars, worth $2,754,000. Before there can be said to be any net revenue from the operation of these contracts it is necessary to allow against the above net earnings six per cent. on that amount of capital, or a yearly charge of $165,240. This is a larger amount than the profit shown for any year in the seventeen months concerning which this statement is made unless the lines south
173 of Baltimore are included, and therefore there has been, during that time, no net profits in this business, but there has been at all times a deficit. If the lines from Baltimore to Quantico be added there will remain a surplus representing net earnings not exceeding the sum of $27,040.91 in any one year of the period above referred to.

In making the above calculations, I have omitted from the earnings and expenses of complainant in operating cars upon the Pennsylvania Railroad system, all earnings and expenses connected with the Allegheny Valley railroad, because of information that the Allegheny Valley railroad was one not included in the lease of the transportation company, but was one with which the Pullman Company had a contract for the operation of sleeping cars before control of it was acquired by the Pennsylvania Railroad Company. I have also made the statements above given show the earnings and expenses of the Pennsylvania Railroad system including the lines from Baltimore to Washington and Quantico and also excluding those lines, because the lines from Baltimore to Washington and Quantico were not assigned by the lease from the Central Transportation Company,

and were built by corporations other than the Pennsylvania Railroad Company.

Of the railroad companies mentioned in the sixteen contracts assigned with such lease of 1870, I have included in this statement twelve, viz.: the Pennsylvania Railroad Company, the Northern Central Railway Company, the "New York and Washington through line," the Pittsburgh, Fort Wayne and Chicago Railroad Company, the Cincinnati, Hamilton and Dayton and Dayton and Michi-
174 gan Railroad Company, the Bellefontaine and Indiana and Indianapolis, Pittsburgh and Cleveland Railroad Companies, the Indianapolis and Cincinnati Railroad Company, the Terre Haute and Indianapolis Railroad Company, the St. Louis, Vandalia and Terre Haute Railroad Company, the Louisville, Cincinnati and Lexington Railroad Company, the Columbus, Chicago and Indiana Central Railroad Company, and the Jeffersonville, Madison and Indianapolis Railroad Company.

I have made no calculation of the earnings of the other four of said sixteen railroad companies, to wit: the Baltimore and Ohio Railroad Company, the Marietta and Cincinnati Railroad Company, the Central Ohio Railroad Company, and the Ohio and Mississippi Railroad Company, because complainant has no contract with such railroad companies now for the operation of sleeping cars, and is not operating sleeping cars upon them.

The whole of the "New York and Washington through line" is not included in the calculations I have made because, at the time of the lease from defendant to complainant in 1870, that line was operated over the Baltimore and Ohio railroad from Baltimore to Washington, and complainant is not now operating any cars over that part of the line.

STEPHEN LITTLE.

Subscribed and sworn to before me, the undersigned, a notary public in and for said State and county, this April 23d, A. D. 1887.

[NOTARIAL SEAL.] AMBROSE RISDON,
Notary Public.

175 In the Circuit Court of the United States for the Eastern District of Pennsylvania.

PULLMAN'S PALACE CAR CO.
vs.
CENTRAL TRANSPORTATION CO. } In Chancery.

STATE OF PENNSYLVANIA, }
City and County of Philadelphia, } *ss:*

Henry S. Billings, being duly sworn, says: I have been a superintendent of said complainant company for more than fourteen years last past and have had charge of the operating and repairing of sleeping cars. I am familiar with the cost of building and repairing such cars and know how often they usually need repairs, how long they usually last, and how much they usually depreciate

from year to year. I believe the depreciation on sleeping cars due to age is fully five per centum per annum of the value thereof. By this I mean that such cars suffer that much depreciation yearly, even if kept in proper condition and usual repair.

Whenever any cars belonging to said complainant company are destroyed in such a way or under such circumstances as to render the railroad company on whose lines such car is destroyed liable therefor to said complainant the value thereof at the time of destruction is arrived at by deducting an annual depreciation of five per centum from the original cost thereof. This is the usual manner of arriving at the amount to be paid complainant for cars destroyed under such circumstances.

H. S. BILLING-.

Subscribed and sworn to before me this 25th day of April, A. D. 1887.

ANDREW ZANE, JR.,
Notary Public.

[SEAL.]

Endorsed: Chancery. No. 44. Oct. sess., 1886. U. S. circuit ct., east. dist. Penna. Pullman's P. Car Co. *vs.* Central Tr. Co. Aff. of H. S. Billings. Filed 26 April, 1887. Samuel Bell, clerk.

176 In the Circuit Court of the United States for the Eastern District of Pennsylvania.

PULLMAN'S PALACE CAR CO.
vs.
CENTRAL TRANSPORTATION CO. } In Chancery.

STATE OF PENNSYLVANIA,
City and County of Philadelphia, } *ss:*

David L. Sylvester, being duly sworn, says that he is superintendent of the Allison Manufacturing Company of Philadelphia; that for twenty-one years last past he has been engaged in the business of car-building; that he knows the cost of building and repairing cars, how often they usually need repairs, how long they usually last, and how much they usually depreciate from year to year.

That there is an association in the United States known as the "Master Car-builders' Association;" that at the general meeting of said association held at Niagara Falls, N. Y., in June, A. D. 1886, a "code of rules governing the condition of and repairs to freight cars for the interchange of traffic" was revised and adopted; that said code of rules provides for estimating the value of freight cars as between railroad companies for the purpose, among other things, of settling and paying for lost or destroyed cars, and one of the rules relating thereto is as follows:

"Depreciation due to age shall be estimated at 6 per cent. per annum upon the yearly depreciated value of bodies and trucks, provided, however, that allowances for depreciation shall in no case exceed 60 per cent. of the value new."

That he has not seen any such code of rules governing depreciation on sleeping cars or ordinary passenger coaches, but from experience he believes and thinks that the annual depreciation due to age on ordinary passenger coaches and sleeping cars is about five per centum per annum on the yearly depreciated value thereof.

From the printed code of rules relating to freight cars printed by said association it appears that the said code has been adopted by nearly all the principal railroads of the United States, including the Pennsylvania Company, the New York Central and Hudson
177 River Company, the Baltimore and Ohio Company, the Chicago, Burlington & Quincy Company, the Chicago, Milwaukee and St. Paul Company, the Delaware, Lackawanna & Western Company, the Grand Trunk Company, the Illinois Central Company, the Lake Shore and Michigan Southern Company, the Michigan Central Company, the Union Pacific Company, the New York, Lake Erie & Western Company, the Philadelphia & Reading Company, the Missouri Pacific Company, and very many other companies.

DAVIS L. LANCASTER.

Subscribed and sworn to before me this 25th day of April, A. D. 1887.

[SEAL.] TH'S RANDALL, *Magistrate.*

Endorsed: Chancery. No. 44. Oct. sess., 1886. U. S. circuit ct., east. dist. Penna. Pullman's P. Car Co. *vs.* Central Tr. Co. Aff. of D. L. Sylvester. Filed 26 Apr., 1887. Samuel Bell, clerk.

178 And afterwards, to wit, on the twenty-sixth day of April, 1887, come the parties aforesaid, by their counsel aforesaid, and this cause being called for argument before the Hon. William McKennan, circuit judge, and Hon. William Butler, district judge, on motion for preliminary injunction, and having been argued by counsel for the respective parties on the 26th and 27th and concluded on the 28th of said month, and the court, not being fully advised in the premises, takes further time for the consideration of the same.

And afterwards, to wit, on the day and year last aforesaid, come the parties aforesaid, by their counsel aforesaid, and the court, now being fully advised in the premises, enters the following decree, to wit:

179 *Decree for Preliminary Injunction.*

In the Circuit Court of the United States for the Eastern District of Pennsylvania.

PULLMAN PALACE CAR CO. *vs* CENTRAL TRANSPORTATION CO. } Oct. Sess., 1886. No. 44.

And now, April 28, 1887, this cause having come on to be argued upon motion for preliminary injunction upon bill, answer, and affi-

davits, the answer being read as an affidavit, and the court being fully advised in the premises, it is, upon due consideration, ordered that a special injunction issue restraining the Central Transportation Company from further prosecuting against the said Pullman Palace Car Company the suit at law in the circuit court of the United States, No. 75, Oct. sess., 1886, and from instituting or prosecuting any other suit for rent accruing after the 1st of July, 1886, under the lease of February 17, 1870, described in the bill of complaint, and the injunction prayed for restraining the respondents from prosecuting suit for rental accruing antecedently to the 1st day of July, 1886, is refused. The application for a receiver is also refused.

Endorsed: 44. Oct. sess., 1886. C. C. U. S., E. D. of Pa. Pullman Palace Car Co. *vs* Central Trans. Co. Decree. Filed Apr. 28, 1887. Samuel Bell, clerk.

180 *Replication.*

PULLMAN PALACE CAR CO.
vs.
CENTRAL TRANSPORTATION CO. } U. S. C. C., Oct. Sess., 1886. No. 44.

This repliant, saving and reserving to itself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

SAM'L DICKSON,
For Compl't.

Endorsed: 44. Oct. sess., 1886. U. S. C. C. Pullman's Palace Car Co. *vs.* Central Transportation Co. Replication. Dickson. Filed 3 May, 1887. Samuel Bell, clerk.

181 In the Circuit Court of the United States for the Eastern District of Pennsylvania.

PULLMAN'S PALACE CAR CO.
vs.
CENTRAL TRANSPORTATION CO. } In Chancery. No. 44. Oct. Session, 1886.

Now comes said complainant, by its solicitor, and moves the court to grant an injunction to restrain the said defendant from prosecuting any suit at law brought by it against the complainant upon the covenants of a lease made between the complainant and the defend-

ant and bearing date the 17th day of February, A. D. 1870, a copy of which lease is attached to the bill of complaint and is Exhibit "A."

PULLMAN'S PALACE CAR COMPANY,
By SAMUEL DICKSON, *Its Solicitor,*
By RICHARD C. DALE.

U. S. circuit court, eastern district of Pennsylvania. In chancery. Pullman's Palace Car Company *vs.* Central Transportation Co. Motion by complainant for injunction to restrain defendant from prosecuting any suit at law brought by it against complainant upon the covenants of lease made Feb'y 17th, 1870. Filed Jan. 21, 1888. Samuel Bell, clerk.

182 In the Circuit Court of the United States for the Eastern District of Pennsylvania.

PULLMAN'S PALACE CAR COMPANY *vs.* CENTRAL TRANSPORTATION COMPANY. } In Equity. No. 44. Oct. Sess., 1886.

Complainant's Evidence-in-chief.

Testimony on behalf of complainant, taken before Samuel Bell Esquire, a commissioner of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, stipulated examiner, at his office, room No. 10, third floor, United States courts and post-office building, 9th and Chestnut streets, Philadelphia, on this 27th day of October, A. D. 1887, and on subsequent days by adjournment.

Present: Hon. E. S. Isham, William Burry, Esq., Samuel Dickson, Esq., for complainants; John G. Johnson, Esq., for respondents.

183 WILLIAM J. HOWARD, having been duly sworn, stated that before he commenced his examination he desired to look at his prior testimony.

(Objected to by Mr. Johnson.)

The WITNESS: There are dates and things of that kind that I cannot pretend to remember.

By Mr. ISHAM:

Q. State your occupation and residence.
A. I am by profession a lawyer, and reside in the city of Philadelphia.
Q. How long have you been engaged in your profession?
A. I have not been engaged in it for ten years past. I retired from the business.
Q. How many years has it been since you commenced it?
A. I think I was admitted to the bar in 1848 or 1849. I was in

the service of the Pennsylvania Railroad Company in charge of its legal department for some seventeen or twenty years.

Q. Do you know the complainant and respondent in this cause, the Pullman Palace Car Company and the Central Transportation Company?

A. I do; yes, sir.

Q. What have been your relations to the respondent, The Central Transportation Company?

A. I was a stockholder, and at one time (I think) president of the company. The exact year I can't remember. Subsequently, I was a member of its board of direction.

Q. Do you remember during what years you were in the board?

A. 1885, and some years prior to that time.

184 Q. How many years?

A. I suppose four or five, probably.

Q. During the years from 1883 to 1885, how far were you conversant with the business of the Central Transportation Company and its relations to the Pullman Palace Car Company?

A. About all the business that we had to do was to receive and distribute dividends to our stockholders and to approve some little matters of bills, and in the last two or three years discussing from time to time the expiration of the contract with the Pullman Company.

Q. I intended to ask particularly to what extent you were familiar with and personally knew of the affairs of the transportation company and the Pullman Company?

A. I prepared the lease on behalf of the transportation company originally; negotiated with Mr. Dexter, who represented the Pullman Company. That was fifteen years ago. I do not know the exact date of it. That was simply as counsel.

Q. During the time that you were in the board were you generally actively concerned in the management of that business?

A. As much so as any of the other directors.

Q. You speak of a lease between the Central Transportation Company and the Pullman Palace Car Company; what was that lease?

A. I mean a lease of the property and contracts, and I think assignments of patents that were owned by the transportation company at that time. I presume the lease itself will set that out very fully.

Q. Look at the document, which I now hand you, dated
185 February 17, 1870, purporting to be between the Central Transportation Company and the Pullman Palace Car Company, and state if you know it, and if so, what it is?

A. I see the blanks are filled up in my handwriting, and I have attested it as a witness.

Q. Is that the original lease made between the Central Transportation Company and the Pullman Palace Car Company under which the Pullman Palace Car Company was acting from the date of that instrument to February, 1885, and which is mentioned in the bill of complaint?

A. I should say it was. It appears to be the original contract.

(Mr. Johnson agrees that the copy of the lease printed in the bill filed is a correct copy of the original.)

Q. Did you know of the contract in force between the Pullman Palace Car Company and the Pennsylvania Railroad Company, which expired on the 27th of January, 1885?

A. I remember it very well. I may say I am conversant with it; that is, in a general way. We had it attached to the papers belonging to the Central Transportation Company, and in that way it was frequently before our board.

(It is admitted by Mr. Johnson that the copy of the Pennsylvania contract expiring 27th January, 1885 (Exhibit B), attached to the bill of complaint is a correct copy of said contract, and further, that the exhibits attached to the bill, where they purport to be copies of original documents are correctly so stated.)

186 (Mr. Johnson also admits that "Exhibit H" to the original bill of complaint is a correct copy of the contract and supplemental contract entered into between the Pullman Palace Car Company and the Pennsylvania railroad.)

Q. I call your attention to "Exhibit B," which is a copy of the Pennsylvania railroad contract with the Pullman Company expiring January 27, 1885, of which you have just spoken, and ask you whether or not you were a member of the board of direction of the Central Transportation Company at the time that contract expired, and whether your board of directors had any communications prior to the expiration of that contract with the Pullman Palace Car Company with reference to that fact, with reference to the action of the companies concerning that fact, and with reference to any renewal of the contract, or the making of a new railroad contract with the Pennsylvania Railroad Company and the Pullman Company.

A. Your question is a very broad one. I was a member of the board of the Central Transportation Company on the 27th of January, 1885, and for some years prior thereto. I may say that our chief business for two or three years prior to the expiration of this contract was with respect to its renewal by the Pullman Palace Car Company. I may safely say that there were very few meetings of our board within that period of time in which that was not the main subject of our discussion.

Q. How long a period of time was that?

187 A. Two or three years. I remember certainly three years before the expiration of the contract we were in repeated communication within those periods of time with Mr. Pullman directly, or with Mr. Horace Porter, who was the vice-president of the company, respecting their own views as to its renewal; that is, as to the renewal of their contract with the Pennsylvania Railroad Company, and if my recollection serves me, I think there was a clause in the contract between the Pullman Company and the transportation company that required the officers of the transportation company to assist the Pullman Company in the negotiation of

a new lease. I am stating that from a sort of vague recollection, but I am pretty certain that it is so.

Q. You do not mean a lease?

A. I mean that in the original lease between the Pullman Palace Car Company and the transportation company there is a clause which requires the officers and directors of the transportation company to render the Pullman Company all the assistance possible in a renewal of the lease.

Q. You do not mean a renewal of the lease, but of the railroad contract?

A. I mean a renewal of the contracts between the Pullman Palace Car Company and the Pennsylvania Railroad Company. I might make myself clear if you will permit me to refer to that contract, or refer to it yourself.

Mr. JOHNSON: That contract is before you, and I have no objection to your turning to it. It is "Exhibit A."

The WITNESS: I see that it is the sixth clause. It was in
188 view of that clause that we had this matter up so often among ourselves, and on one occasion, in an interview with Mr. Pullman, when we brought it to his attention to know what steps, if any, he was taking to renew the contract, he said he had been in communication with Mr. Roberts, the president of the Pennsylvania Railroad Company, who replied, in substance, that there was time enough to take that subject up; that it had two or three years to run before its expiration. That helps to fix in my mind about the time of these negotiations, and the movements as to the expiration of the contract.

As the time for the expiration of the contract was gradually expiring, we had repeated conversations and communications, I suppose mainly personal, between the officers of the Pullman Company and the officers of the transportation company in respect to the renewal of their lease with the railroad company, and I suppose it was within a very few months of its expiration when the matter pressed itself upon the attention of all hands, more particularly of Mr. Pullman and the Pennsylvania Railroad Company, that they took it up and discussed it.

By Mr. ISHAM:

Q. What did you learn as to the probabilities of a renewal of such a contract?

A. We were uncertain of its renewal up to the very date of its expiration. The differences and difficulties between them seemed to be insurmountable. Mr. Pullman reported to us almost every day—every time he came on—about those negotiations. He invariably, I may say, reported to the directors and officers of the
189 transportation company his action in respect to his negotiations with the Pennsylvania Railroad Company, keeping us fully informed as to all the points.

I may say that personally I did not regard the sixth clause—I would have considered it an act of impertinence on my part to have gone to the Pennsylvania Railroad Company and made any sugges-

tions to them with regard to this lease of the Pullman Company, because we were no party; we had no contracts with the Pennsylvania Railroad Company, and they might have asked who I was.

Q. Prior to the expiration of this Pennsylvania Railroad Company contract, what information did the Central Transportation Company's directors have as to the prospect of a renewal of that contract, or the making of a new one like it by the Pennsylvania Railroad Company?

A. As I have already stated, we were fully advised by Mr. Pullman of his negotiations Some of the members of our transportation company board had been in communication with some of the officers of the Pennsylvania Railroad Company, who also communicated to them, in a general way, a determination—nothing definite—but a determination upon the part of the railroad company, not to make so liberal a contract, if they made any at all, with the Pullman Company, as they had heretofore done, or as the contract in existence was; that it was very likely that they would put on their own cars, and do their own business—their sleeping-car and parlor-car business. That information, as I say, kept up from time to time, repeatedly and repeatedly, until the contract was actually
190 made between the Pullman Company and the Pennsylvania Railroad Company, and during all those negotiations the terms of that contract were submitted to us from time to time.

Q. What did the Central Transportation Company learn from the Pennsylvania Railroad Company, or otherwise, as to what terms, differing from the other expiring contract, they would insist upon in any new contract they might make, if they learned anything?

A. For instance, the question of car repairs, I think, was to be omitted, and cleaning the cars. I do not say this with entire certainty. I am only repeating to you the conversations. These papers will speak for themselves better than I can, when you come to look at them. I am only reporting to you now what transpired from time to time. My recollection is, that the Pennsylvania Railroad Company would allow no car service—would require the company to do its own cleaning of cars. I think they claimed the right to annul the terms of the contract, and that they wanted the option of becoming interested in the stock of the Pullman Company, and proposed to do their own parlor-car service, not the sleeping-car service, but the parlor-car service.

Those are generally the matters that were reported to us from time to time as being the changes that the Pennsylvania Railroad Company were likely to insist upon in any new contract that they made with the Pullman Company.

Q. Did the board of directors of the Central Transportation
191 Company, prior to the expiration of the Pennsylvania Railroad Company contract, receive any communication from the Pullman Company with reference to that event and with reference to the future action of the Pullman Company?

A. Yes, sir; repeatedly. Indeed, we required no notice from them of its expiration. It was constantly before us, and a committee of the board was appointed to enter into those negotiations with Mr.

Pullman. I think I was one of the members of that committee. I remember very distinctly Mr. Pullman coming to us at one time, I think, with a formal notice to annul the contract entirely between the transportation company and the Pullman Company. I suppose, perhaps, he had got disgusted with his efforts on behalf of renewal, and my impression is that he either showed us, or left at the board, a formal notice of his intention to annul that contract with the Central Transportation Company.

Q. How long before the expiration of the then existing Pennsylvania Railroad contract did that occur?

A. I cannot fix an exact date with respect to that, but I should say that it was, perhaps, within possibly six months of its expiration.

I may say in that connection that we all understood the character of the Central Transportation Company, I suppose, better than the ordinary stockholder would. We had nothing as a corporation but some 119 or 120 cars. Our contracts and our patents constituted our stock in trade. Those were the things that were assigned to the Pullman Company originally.

192 Time was gradually weakening the value of those patents and of those contracts. We, that is the transportation company, were without any organization to carry on the business. We had no equipment except what we might get from Mr. Pullman by an annulment of the lease. He was bound to return us, I think, 119 or 120 cars under contract. We had no connection with other connected roads, that is, roads connecting with the Pennsylvania railroad, and altogether we were in a position that we could not afford to allow that contract to be annulled if we expected to go on and give our stockholders a dividend. We protested always earnestly against Mr. Pullman's efforts to annul the contract.

Q. What other persons than Mr. Pullman, I mean persons representing and acting for the Pullman Car Company, did your board have communication with on that subject?

A. The only other person that it could have been was Mr. Horace Porter, the vice-president. Those were the only two gentlemen that we ever met, except it was their counsel, on this subject.

Q. Do you remember who the counsel were who met your board of directors on that subject?

A. Mr. Pullman had a number of counsel. I think Judge Lochrane, of Georgia, was one of them. We had several interviews here.

Q. Do you remember Mr. Bacon?

A. I suppose I would remember his face very well. I would not remember Judge Lochrane, except that I had met him previously at Atlanta, and became acquainted with him there. He was a very jolly good fellow whom nobody could ever forget.

193 Q. State what occurred upon the announcement to your board of the determination of the Pullman Company to annul the lease with the Central Transportation Company?

A. I do not know that anything more took place than simply that the board had a general discussion and general talk.

Q. Were there many interviews upon that subject?

A. There were several interviews. There were interviews without number. I couldn't pretend to recall the number of them.

Q. I mean interviews of the representatives of the Pullman Company with the directors of the Central Transportation Company?

A. As I said before, those interviews were very frequent—very frequent, indeed. But whether the interviews that you have mentioned were simply with reference to the annulment of the lease—that was taken up all the way through as a subject of discussion.

Q. State fully what attitude the board of directors of the transportation company assumed with reference to this proposition of Mr. Pullman to annul the lease?

A. We objected to it very strenuously, for the reasons that I have stated.

Q. Did your board enter into consideration to any extent, and if so, to what extent, of the advantages or disadvantages to the Central Transportation Company of an annulment of the lease by the Pullman Company?

A. We did, very fully and very often.

194 Q. Did your board consider and discuss in that connection the idea of any apprehension on your part, that is, on the part of your board of directors, of the Pullman Palace Car Company annulling the lease with the Central Transportation Company, and afterwards making an independent contract on its own account with the Pennsylvania Railroad Company? Did that subject come under consideration in your board?

A. If I take your point, I think it was very germane to our entire discussion on that matter, and if you will allow me to explain why, I will do so. I was always of the impression that our position was a very weak one, situated as we were. Mr. Pullman might have annulled that lease with the transportation company. He could readily have done it if he had insisted upon it. He might have turned over to the transportation company its cars, its contracts, and its unexpired patents which he had received from us, and simply laid down and waited events.

The transportation company, as I have already said, having no organization and no equipment sufficient for the largely increased business of fifteen years, having no connection contracts with other roads, would have been unable to make any contract with the Pennsylvania Railroad Company to run over its line.

No officers of the Pennsylvania Railroad Company had ever communicated such an idea of refusal on the part of the company, because the question had never arisen; but it was merely a surmise of our own that, being placed in the position we might be

195 after an annulment of the lease, those objections could be very readily urged against making a contract with the transportation company. Being left in that position, the Pennsylvania Railroad Company having refused, perhaps, or declined to make a contract with us, we would have been left floating. Mr. Pullman would then have been at liberty, as I conceived at the time—at perfect liberty to have come in, and said to the Pennsylvania Railroad

Company: "We have these connections; we have unlimited capital and unlimited equipment; we have a perfect organization, and if you won't make a contract with the Central Transportation Company, will you make a contract with us?" Well, as a mere matter of surmise, I suppose that the Pennsylvania Railroad Company, if it did not intend to do its own business, would have preferred Mr. Pullman to the Central Transportation Company for those reasons, and we would then have had to go into liquidation, and dispose of our cars to the best advantage we could, and go out of business.

Q. Was the apprehension of that result discussed in your board of directors?

A. Fully.

Q. With reference to this proposition?

A. Yes, sir.

Q. And with reference to the action and attitude that you should hold?

A. Fully with reference to our weak points. We discussed them among ourselves, and that was one of the reasons why we always insisted upon Mr. Pullman endeavoring to do his best to
196 make his contract with the Pennsylvania Railroad Company.

Q. When the then current contract with the Pennsylvania Railroad Company should expire, what others of the contracts assigned to the Pullman Company by the Central Transportation Company's lease would remain in force?

A. I cannot recall them, but I apprehend there would have been few, if any—perhaps none. That I could only tell by going over the dates of the expirations; but we never practically considered those of much account. The Pennsylvania Railroad Company was the mainstay to both of us in this matter at that time.

Q. The eighth section of the Central Transportation Company's lease contains the provision for an annulment of the lease by the Pullman Company, and provides for that annulment in a certain event, namely, "the falling below the sum of $264,000 per annum of the profits, income and revenue derived from and under any other and remaining contracts" assigned in that lease. Did your board consider, and if so, to what extent, the question of whether the contracts that would remain in force after the expiration of the then current Pennsylvania contract would yield an income of $264,000?

A. Oh, yes; that was the basis of our entire discussion. As long as we could get the $264,000, we would have been very glad to have done so; but when these contracts had expired by limitation, or were taken off their road from any other cause, as a matter of course, we expected to take pot-luck with Mr. Pullman.

197 Q. Did you make any investigation or seek to inform yourself as to whether or no the expiration of the then current Pennsylvania contract would make those revenues fall below the sum of $264,000?

A. Oh, yes; we had ample notice of that. And I will say that that was the cause of our anxiety on the whole subject.

Q. You were satisfied that that fact would be true?

A. We had ample notice, two or three years prior to that, that no such contract would be made again with us—that is, with the Pullman Company—that they could not afford to pay us that amount of money.

Q. Did your board become satisfied that in that event the revenues would fall below the sum of $264.000?

A. From all that we could know on the subject, and from all that Mr. Pullman could advise us, and Mr. Cottinger's calculation—or Mr. Wolverton, I think, who took a very active part in those matters—we felt pretty certain that if we cut off from the Pennsylvania Railroad present contract to one much modified, that we would not be able to get what we were getting.

Q. Please state what occurred after your board, as you have stated, opposed the Pullman Company's purpose to annul this contract, and urged upon them to endeavor to secure a new contract with the Pennsylvania road. Narrate as fully as you can what occurred between the parties.

198 A. I cannot pretend to give you in detail all the conversations that we had on the subject; but as representing the Central Transportation Company, and for the reasons that I have already stated, you can see why we were so urgent, and why we insisted so strongly upon Mr. Pullman exerting himself in every possible way to get a renewal of that contract, or some other contract, with the Pennsylvania Railroad Company—the best he could make.

I may say that we were no parties to the making of that contract between Mr. Pullman and the Pennsylvania Railroad Company. We had nothing whatever to do with it. We were not brought into connection with the Pennsylvania Railroad Company in any way, or at any time, to have the terms discussed, or to discuss them on our own behalf. For that reason, we had to rely upon Mr. Pullman's reports to us of his efforts from time to time in respect to those negotiations.

Mr. Pullman, upon several occasions, was very much discouraged. I suppose, had it not been for the moral support that we gave him in backing him up and urging him on, the possibility might have been that he would have abandoned it altogether. I do not say that he would have done so, understand me, but if I take Mr. Pullman, whom I consider a truthful man in every respect, a man somewhat peculiar in his manner, not very aggressive, but pretty decided, I would have said that the first rebuff or two would have settled him in any negotiation—would have broken it right off, and that would have ended it.

Q. Was there any difference in the information upon that subject which your board received from Mr. Pullman and the

199 information upon the same subject which your board, or the members of your board, received from the officers of the Pennsylvania Company?

A. None whatever. Mr. Pullman gave us the substance—the form of the contracts themselves, from time to time—exhibited them

to us, and the various discussions with the Pennsylvania Railroad Company.

Q. Were there drafts made from time to time as the negotiations went on?

A. Yes, sir; drafts of the proposed contracts.

Q. And you say that those successive drafts were shown to your board?

A. Yes, sir; we saw them.

Q. And that they were the subject of discussion there?

A. Yes, sir.

Q. Have you any idea how many such drafts were made?

A. No; I could not say from memory how many; but during the final negotiations, I think we were together almost every day for a week or two, perhaps.

Q. After the Pullman Company had signified its purpose to annul the lease, and met with the objections from your board which have been spoken of, and the request that the company should proceed and endeavor to negotiate a new contract with the Pennsylvania railroad, was there anything said, and if so, what, by the representatives of the Pullman Company as to the continuance after the expiration of the then current Pennsylvania contract of the old rental of $264,000 a year?

(Objected to as irrelevant.)

200 A. The question is a little involved; but if I understand it, it is in substance this: "Was the rental of $264,000 to continue after the expiration of the contract between the Pullman Company and the transportation company up until such time as a new contract between the Pullman Company and the Pennsylvania Railroad Company had actually been made?" Do I understand you rightly?

Q. You do not. I will ask you another question. The section called the 8th section in the Central Transportation Company lease containing the provision for annulment of the lease by the Pullman Company in a certain event, contained, also, an alternative provision for continuing the lease in force under a different rental—a share of the net revenues that should be earned—did it not?

A. Yes, sir. I could not express it any more clearly than it is expressed in that clause itself.

Q. When you, that is the directors of the Central Transportation Company, opposed the Pullman Company's purpose of annulling the lease, what did you propose that it should do instead of that?

(Objected to as irrelevant; it is immaterial what proposition was made except witnessed by resolution of the board, and accepted.)

Q. Was it the proposition of your board that he should go on and pay the old rental of $264,000 a year?

(Objected to as leading.)

Q. What was the proposition, if any, of your board as to the continuance of the old rental of $264,000 a year?

(Objected to as irrelevant and leading.)

201 (Mr. Isham here withdraws the two last questions, and desires an answer to the first of the three, which was read to the witness.)

The WITNESS: We proposed that they should make the best one that they could to take the place of the one expiring.

(The following question heretofore objected to by Mr. Johnson, was here read to the witness: "What was the proposition, if any, of your board as to the continuance of the old rental of $264,000 a year?" And he was asked by Mr. Isham in addition: "Was anything said, and if anything, what, in that connection by the representatives of the Pullman Company as to the continuance of the rental of $264,000 a year after the expiration of the current Pennsylvania contract?")

(Objected to as irrelevant and leading.)

A. I do not suppose that it entered into the mind of any member of the board of the Central Transportation Company for one moment that the Pullman Company was to pay the sum of $264,000 after the expiration of their lease with the Pennsylvania Railroad Company. It was very fully understood that any new contract that Mr. Pullman might make with the Pennsylvania Railroad Company would date from the expiration of the old contract, and that our revenues, whatever they might be—whatever might be agreed upon, would run from that period—that is, from the date of the new contract, unless, and I will qualify that—unless Mr. Pullman was receiving in the meantime all that he was receiving under the old contract, which I do not suppose was the case.

202 (Answer objected to by Mr. Johnson, who objects to the witness stating his understanding.)

The WITNESS: I presume the new contract would show the date—that is, when that took effect.

Q. When was the committee of the board of directors appointed which was to specially look after these relations?

A. The minute book will show that, but I rather incline to the opinion that it was fully two years before its actual expiration.

Q. Who were the members of the committee of the board?

A. I speak from memory only. I think Mr. Lane was one of the committee, also Mr. Wright and myself and Mr. Bingham. I think he was president of the company at that time. There was a committee, I think, of three or four of us.

Q. Did that committee report to the board of directors its conferences and negotiations with the Pullman Company upon this subject?

A. Always—invariably. And very frequently Mr. Pullman was before the entire board itself. I may say that those reports were verbally and generally discussed. There was no formal action. I suppose no formal action was taken by the committee during this period of time that would resolve itself into the shape of a formal resolution, or anything of that kind. The subject-matter was not

in condition to be placed in that form. It was the mere appointment of a committee and our reports, from time to time approved, such as we were able to get from the best sources of information we could.

203 Q. When you urged the Pullman Company to go on and attempt to negotiate a new contract with the Pennsylvania railroad after they had notified you that they were going to annul the contract, did they do that without objection—that is, did the Pullman Company consent to abandon their proposition to annul the contract, and go on and negotiate a new contract with the Pennsylvania railroad the best they could?

A. Unquestionably, they went on and made every effort possible to renew that contract, I suppose for their own interest, and with the assurances that we were giving them from time to time, urging them to do it.

Q. What, in the meantime, was to be done with the continuing rental of $264,000 a year?

(Any testimony objected to as to what was to be done with the rental, which was not the result of agreement between the parties formally entered into on the part of the board of directors of the Pullman Palace Car Company and of the Central Transportation Company.)

A. I can only answer that question in this way, by saying that I presume the new contract between the transportation company and the Pullman Company will express that more definitely and clearly and satisfactorily than I can, merely from recollection.

(Objected to.)

The WITNESS: That is to say, their revenues would cease at the expiration of the old contract, and whatever was new was to
204 begin from the beginning of the new one. I do not remember the dates of those contracts. I presume you have them here. They will show. If I comprehend your question, I will endeavor to answer to the best of my ability; but if the purpose of your inquiry is this—if it is to show that the Central Transportation Company expected to receive $264,000 a year after the expiration of that old contract, I can simply say that no such expectation was ever suggested or thought of.

(Objected to.)

Q. I understand you to say that after Mr. Pullman, or the parties representing the Pullman Company, had notified your board of their purpose to annul the contract, you opposed it, and urged them instead of that to proceed and attempt to negotiate a new contract with the Pennsylvania Railroad Company as best they could?

(Objected to as leading and persuasive.)

A. Yes, sir.

Q. State whether any condition was interposed by the Pullman Company in the matter of putting aside their purpose of annulling

the lease and of proceeding to negotiate a new railroad contract concerning the continuance of the old rental of $264,000 a year?

(Objected to as leading and irrelevant.)

A. Well, that is a question that ought to answer itself. I cannot state from recollection that Mr. Pullman ever exacted any consideration in the matter of refusing to annul the lease, nor that he ever specifically made any condition respecting it. We considered
205 that he was acting in entire good faith in endeavoring to have it renewed. We knew all along that if any delays were existing in respect to its execution, those delays were not the fault of Mr. Pullman. They were entirely the fault of the Pennsylvania Railroad Company.

Q. Did they make any statement in that connection, and if any, what, with reference to the continuance or abandonment of the old rental of $264,000 a year?

(Objected to as irrelevant; and also as covertly leading.)

A. Well, I would not suppose that that matter was a subject of condition at all. It was there written in the contract. That was the end of it, and if there was anything that Mr. Pullman did, or that we did, it would not have any bearing upon that at all. It would expire naturally according to contract—the $264,000. That was the end of it. Without being able to state absolutely that Mr. Pullman ever made any condition with respect to this thing, I would suppose that it was too much a matter of common sense upon all hands to think that a thing of that kind would require any special or positive bargain. That is to say, the contract expired on the 27th of January, 1885. That was the end of it, and that was the end of Mr. Pullman's payments to us. He was doing his business upon the road simply by sufferance, under no contract, and could have paid us no money unless he chose to have paid us in equity what might have been a fair proportion of his earnings between the date of the expiration and the time of the new lease.
206 But as to anything upon the part of anybody that I can remember in the faintest way, we did not suppose for one moment that Mr. Pullman was going to pay us $264,000 a year after the contract had expired.

Q. Was anything said by him on that subject to your board?

(Objected to as irrelevant and leading.)

A. There must have been, as a matter of course. It was just one of those things which you could hardly expect a man to make a condition about; but it could not have been otherwise. Mr. Pullman may, perhaps, have a recollection upon that more vivid than I have; but exercised as I was, and desirous to represent the interest of the transportation company, I never would have conceived it to have been just to any parties to have exacted $264,000 after their earnings had fallen off, and no other one would.

I want to answer your questions as squarely as I know how, if I can only thoroughly comprehend them; but when you ask me for

a specific statement as to whether Mr. Pullman absolutely made a condition, that if he did not annul that contract, we would not exact $264,000, I cannot say that with entire distinctness. He may have done so. The conversation was very general and very broad, and very full and very frank. But I would be more surprised if anybody ever expected Mr. Pullman to do a thing of that kind. That is, to pay us that amount of rental after his contract had expired. Certainly, I never did. As I said before, we expected to take pot-luck with Mr. Pullman in anything that he was able to do—the best we could.

207 Q. Then, in case a new railroad contract should be negotiated with the Pennsylvania Railroad Company, what understanding or arrangement did you come to as to what the rental to be paid the Central Transportation Company should be after the expiration of the then current Pennsylvania Railroad contract, if it was not expected that the rental of $264,000 should continue after that time?

(Objected to as irrelevant, unless the understanding asked for is a formal agreement resulting from a resolution of the board of directors of the Central Transportation Company.)

A. That was a matter entirely of accounting. You must bear in mind that the old contract was so much modified, that what would be an equitable, fair proportion of their estimated earnings, which the Central Transportation Company should receive under the new contract, was a matter of calculation and a matter of figures. Those estimates were made. Mr. Pullman put us in possession of his books, papers, memoranda, and all the data that we asked for, and gave us all the information that we at any time asked or required of him, that we might determine what a fair share of his prospective earnings under his new contract would be. As a matter of course, we urged more than we finally agreed upon. I think it was $66,000.

Q. How did you arrive at the point that a fair share of the earnings under the new contract had to do with the rental to be paid to the Central Transportation Company?

(Objected to as irrelevant.)

208 A. It had everything to do with it.

Q. Please state how that came about.

A. The general terms of the contract we could all very clearly understand; but when it came to fixing what our proportion should be of the net revenue derived by Mr. Pullman from that contract, it was a matter of accounting—a matter of estimate.

Q. How did you come to be fixing a proportion for the Central Transportation Company when the lease called for $264,000 a year specifically?

(Objected to as above.)

A. That lease had expired. We had nothing to do with the old contract at all; we were negotiating entirely under a new order of things.

Q. Please explain what you mean by "the new order of things."

A. The new order of things was an entirely new contract. We had to have an entirely new rental fixed for us, and that rental had to be the subject of discussion among us—the fullest and freest from all sources of information that we could possibly get—to determine how far Mr. Pullman's previous revenues had been reduced under the terms of the new one. Do I make myself understood?

Q. I understand you. The lease, as it stood before the expiration of the Pennsylvania contract, called for a rental of $264,000 a year. Mr. Pullman proposed to annul that contract, you say, and you opposed it. You urged him to go on and negotiate a new contract with the Pennsylvania railroad, and you say a rental to be paid the Central Transportation Company under that, if he should
209 get it, was to be a fair share of what he should earn under that new railroad contract. Please state how, and under what condition that understanding and arrangement with him was arrived at.

(Objected to as irrelevant and leading.)

Q. What was the understanding?

(Objected to as irrelevant.)

A. The understanding was, as a matter of course, first, "Mr. Pullman, you have gone on, now, and you have made the best contract you say that can possibly be made." That we were pretty well assured he had done.

Q. But I ask you now with reference to the state of things just prior to the expiration of the Pennsylvania contract, and before any new Pennsylvania contract had been negotiated at all. What disposition was made, if any, between you and the Pullman Company as to the old rental of $264,000 a year?

(Objected to, unless the disposition asked about was one which was an agreement between the two companies resulting from a resolution by the board of directors of the Central Transportation Company.)

A. I can only answer that question by saying that after the expiration of the old contract it ceased to be a subject of discussion in any shape or form. I do not suppose any member of the board of the Central Transportation Company—certainly I personally—during the interregnum between the expiration of the old contract and the making of the new one, ever expected that we were either entitled to, or would receive any part of the $264,000.

(Objected to as irrelevant.)

210 The WITNESS: It was a thing of the past, as I have said before, and whatever we were to receive after the expiration of the old contract would, in justice and in equity, and in common decency, begin to run from the beginning of the new one, or the expiration of the old one, unless, as I say, during the interregnum while Mr. Pullman was running the road on sufferance, he was re-

ceiving from the Pennsylvania Railroad Company his revenues under the old contract. In such an event I would expect Mr. Pullman to pay us our proportion of that $264,000. Whether that was ever the case I do not know, but I apprehend, from my knowledge of all the parties, that if Mr. Pullman had been receiving, after the expiration of the old contract up to the time of the new contract all that he was getting under the old contract—that is, during that interregnum—that he would have so reported to us, and paid us what we would have been entitled to.

(Objected to.)

The WITNESS: I desire to call the attention of both Mr. Isham and Mr. Johnson to this, for I would like my answers to be not only rational but intelligible. I have looked at the date of this new contract. I think I said some time ago that the new contract would explain more explicitly than I could myself the time of payment, and all that. It is expressed in the new contract, in the last clause, which is, that it takes effect from the 27th of January, 1885; so that that would seem to bear me out in what I have said, that there was no interregnum in which we expected any part of the $264,000; that the reference there is that that new contract dated back
211 of itself to the expiration of the old one, and that our receipts there of $66,000 a year were to be payable quarterly from that period of time.

Adjourned to 3.30 p. m., Friday, October 28, 1887.

FRIDAY, *October* 28, 1887—3.30 p. m.

Present: Messrs. Isham, Burry and Dickson for complainants; John G. Johnson, Esq., for defendants.

WILLIAM J. HOWARD, having been recalled, was further examined, as follows:

By Mr. ISHAM: You have testified that your directors opposed the annulment of the Central Transportation Company lease by the Pullman Company, and urged that the Pullman Company should make the best contract it could with the railroad company, and go on. In that event, what did you expect or propose that the Pullman Company should pay the Central Transportation Company under the lease?

(Objected to as irrelevant, unless it is proposed to prove that there was an agreement by the directors resulting from a resolution of the board.)

A. Our agreement was that Mr. Pullman should pay us a fair, equitable share of his net revenues under any new contract that he could make.

Q. Where did you get upon the idea of that form of payment, a share of the net revenue?

(Objected to as irrelevant.)

A. Under the original lease. The eighth clause of the original lease made a provision of that kind.

212 Q. You proposed to them to proceed under that, then?

A. Yes, sir, that was what they were proceeding under. I made an affidavit in this case some months ago, and desiring to be as near correct as I could, I have taken the liberty of reading it carefully, so that if there was any misstatement or omission or error in it I might have this opportunity of correcting it.

Q. Do you refer to the affidavit filed in this case and executed on the 2d of April, 1887?

A. I do.

Q. You have spoken of negotiations with the Pullman Company on this general subject in the testimony you have already given. State in your own way the occasion of these negotiations, how they arose, and the substance of what was said and done, with the final result that was come to between the Central Transportation Company and the Pullman Company, if any.

(Mr. Johnson objects to any statement of negotiations or statements, or to any agreement not evidenced in writing, resulting from a resolution of the board of directors.)

A. That would involve a narrative, or rather, a history of these proceedings. I will make it as brief as possible.

The Central Transportation Company and the Pullman Company entered into a contract of lease, which is in evidence here, for a term of some ninety-nine years, in which the transportation company turned over their equipment, contracts with the railroad companies, leases and patents. One of the elements of that contract, per-

213 haps the main one in it, was a contract which the Pullman Company had made with the Pennsylvania Railroad Company at or about the date of the lease, which contract was for operating their cars over the line of the Pennsylvania railroad for a period of some fifteen years.

Q. Was that the contract that expired on the 27th of January, 1885?

A. Yes, sir, it was the same contract which expired on the 27th of January, 1885. In the lease between the transportation company and the Pullman Company will be found clause No. 8. That gives to Mr. Pullman certain rights which were, I believe—I do not believe about it, because I have read it—that he had the right to annul the contract of ninety-nine years under certain conditions, that is, if the rental reserved in the lease of $264,000 should fall below that sum, or in lieu of the $264,000, we had the right to accept a fair share of whatever he might derive under new contracts that would subsequently be made with the railroad company.

The time for the expiration of the contract of the Pullman Company with the Pennsylvania Railroad Company was about coming to an end, and as it was the main source of Mr. Pullman's revenues from which he was to pay us the $264,000, both Mr. Pullman and the Central Transportation Company's efforts were with respect to

a renewal of that contract of the Pullman Company with the Pennsylvania Railroad Company.

In the negotiations which Mr. Pullman had with the Pennsylvania railroad, as well as from assurances that some of the directors and officers of the transportation company had from the same source, it was very apparent, and indeed announced and so stated by the officers of the Pennsylvania Railroad Company, that no such contract as the one expiring would be again made with the Pullman Company. Mr. Pullman availed himself of his rights under the eighth section of the lease with the transportation company, and gave to the transportation company a notice. My recollection is by no means distinct; but I have a vague recollection of Mr. Pullman presenting or showing to the board or its members, some form of paper—a form of paper giving us notice of his intention to annul the lease. This notice was clear and explicit, and we (the Central Transportation Company) so regarded it. For the reason that I have stated in my examination of yesterday, the officers of the transportation company felt and knew that they were in no condition to do business in the event of Mr. Pullman annulling the lease, and we agreed with Mr. Pullman, upon our repeated urgence not to annul the lease, agreed distinctly with Mr. Pullman that if he would not annul that lease and throw the property back upon our hands, we would accept a fair and equitable share or proportion of the net revenues which Mr. Pullman could or would receive under any new contract that he might make with the Pennsylvania Railroad Company.

214

These were the causes of our negotiations, for had Mr. Pullman said nothing in respect to annulling the lease the Central Transportation Company would certainly have said nothing upon their part in respect to any other sum which should be received, or ought to be received in lieu or substitution of the $264,000.

215

I say, therefore, unhesitatingly and unqualifiedly that Mr. Pullman's action in withdrawing his notice to cancel and annul the lease between his own corporation and the Central Transportation Company was the result, or resulted from an agreement distinct and unequivocal of the transportation company to receive in lieu or substitution for the $264,000, which was reserved by the original lease, the fair share of whatever he might derive from any new contracts he could make.

These negotiations, so far as the Central Transportation Company were concerned, were made from time to time—Mr. Pullman, Mr. Porter, their auditor, whose name I do not remember, and counsel representing the Pullman Company, and the board of directors of the Central Transportation Company on the other hand, representing themselves—representing their corporation. I have no doubt that there were some of those meetings at which I was not present; but the meetings at which I was present were so numerous that I would not undertake to specify day or date, nor to specify particularly or accurately all the conversations that transpired thereat.

I am certain, however, of one thing which I have already stated—

that our agreement to accept in substitution of the $264,000 a fair share of whatever Mr. Pullman might receive under any new contract that he was able to make, was clear and explicit.

216 Q. Did the representatives of the Pullman Company in this connection take or assume to your board any decided position in regard to continuance under the lease with reference to the continued payment of the rent reserved of $264,000; and if so, what was it?

(Objected to as immaterial and leading.)

A. They did take a very decided stand on that matter, and that stand was that they would not pay the $264,000, but would cancel the lease, and, as I have before said, I have a vague recollection of such formal notice having been either served upon or exhibited to the board.

Q. What statements, if any, did they make to your board with reference to further pursuing negotiations with the Pennsylvania Railroad Company for a new contract while that originally reserved rent remained in force?

(Objected to as irrelevant.)

A. They declined.

Q. In view of those statements of the Pullman Company, what was done? Did you close the negotiations, or did you proceed with the Pullman Company to the negotiation of a new contract?

A. Mr. Pullman, under our agreement to accept a share of what he would be able to make out of the net revenues of his new contract, as a matter of course, continued his negotiations with the Pennsylvania Railroad Company, making every effort that he could to make as liberal a contract for himself as was possible, and, as I have stated, reported to us from time to time.

Q. Did those proceedings result in the negotiation of a contract with the Pennsylvania Railroad Company?

217 A. Our negotiations resulted in the form of a contract which you have before you here, except some modifications which I cannot refer to in detail. Our negotiations resulted in a contract which was approved by the board and rejected by the stockholders.

Q. Did you thereafter continue negotiations with the Pullman Company as to what the share of the net earnings that would be made under that contract should be, that should be paid to the Central Transportation Company; and if so, what were those negotiations, and what was their result?

A. We did. When we had the draft of what might be called the completed contract between Mr. Pullman and the Pennsylvania Railroad Company, we obtained from Mr. Pullman data respecting the estimated earnings under the new contract, and figures showing the relative income between the old contract and the new one. We availed ourselves of every possible source of information, which Mr. Pullman very frankly gave us, in order that the board might be able to judge of what would be a fair proportion arising under his

new contract. I have no recollection of having gone over those figures myself in detail. They were examined critically by, I think, some experts, and by some gentlemen of the board who were more familiar with and better at figures than I was; but it was concluded that the estimated revenues under the new contract would be equal to about six per cent. upon the capital employed by Mr. Pullman in fulfilling the service.

218 In a discussion apart from Mr. Pullman and his representatives, the board adjourned to another room, and there finally agreed to accept three per cent., or a sum equivalent to about $66,000. Let me see. My recollection is a little vague about that. About six per cent. upon the capital of the transportation company. Our capital was $2,200,000. I find that it is so (figuring). We agreed upon fixing the sum at three per cent., I think it was, or equivalent to about three per cent. upon our—that is, upon the transportation's capital stock of $2,200,000.

Q. Were various sums proposed and discussed in the course of this negotiation?

A. Oh, yes.

Q. Separate, distinct sums representing the share of the earnings that should come to the Central Transportation Company? If so, state what various sums were mentioned and discussed.

A. We had never any basis for what might be termed a *bona fide* offer to Mr. Pullman, simply because there was no contract as yet actually existing between Mr. Pullman and the Pennsylvania Railroad Company, that would give us any information as to the nature of his contract with them. We had asked at different times, all sorts of prices—all sorts of figures—eight per cent., seven per cent., six per cent.

Q. Did those sums represent your fair share of the net earnings under the new contract?

A. No, sir.

Q. Did they assume to?

A. They did not, nor did they even assume to, because until the contract was finally determined we had nothing definite upon which to act.

219 Q. My question was, whether whatever sum was fixed upon represented your share of the net earnings?

A. Yes, sir, the three per cent., which we finally adopted, was the representative of what we considered, from the data before us and our knowledge of the contract that had been entered into, as a fair share of the net earnings to be derived from that contract.

Q. Among the various sums that it was proposed to Mr. Pullman in the course of these negotiations to pay to the Central Transportation Company, was any of them equal to the sum of $264,000?

A. None at all; no, sir. That never entered into the discussion at all. We considered that as being a thing settled—a thing of the past.

Q. There is a provision in the form of agreement that was adopted by your board, which was to take effect, as of the 27th of January,

1885, concerning an exchange of stock of the Central Transportation Company for stock of the Pullman Company, was there not?

A. Yes, sir.

Q. Explain how that provision came to be introduced into that contract. What was the reason of that?

A. There were several elements of uncertainty in the new contract between the Pullman and the Pennsylvania Railroad Company that made the permanency of our agreement with Mr. Pullman rather uncertain, the Pennsylvania railroad having reserved the right, I think, to annul it at any time. They also reserved
220 the right to take some interest in the corporation, and without undertaking to specify that particularly, my recollection is that they were such elements of uncertainty with regard to permanency of regular cash payments to the stockholders of the transportation company, that we then introduced the element of the exchange of stock, so that the stockholders might change what they considered a very uncertain source of revenue from the transportation company's stock to one of an assured revenue in the stock of the Pullman Company.

Q. The answer of the Central Transportation Company, filed in this case, avers that Mr. Pullman and the representatives of the Pullman Company made false statements of their affairs to your board of directors, and deceived the board by false statements. What do you say on that subject?

A. From my long knowledge and acquaintance with Mr. Pullman, I should certainly resent it personally as a personal insult if any man were to so charge Mr. Pullman to my face. In all our interviews and intercourse with Mr. Pullman he was entirely frank, and accorded to us the fullest information that we desired, and at no time denied us anything, or acted in any hesitating or doubtful manner in our negotiations. I can only say this in that connection: that we all felt that in accepting the three per cent., or $66,000, it was upon an estimated amount of revenue under a contract that had as yet not been in operation; that if the stockholders had any better information than we had in respect to that subject,
221 they were at liberty to reject it, and that under the terms of the lease, and I presume in equity, they would have their recourse to having Mr. Pullman's books examined by any officer or court with a view of knowing whether the statements that he had made were, or were not, false, or in any respect wrong or erroneous; that if our calculations were in error, they might be rectified by the court.

Q. Did the investigation which you made at that time, and which you caused to be made, as you have said, by experts, give you any reason to doubt the correctness of the statements that were made by Mr. Pullman and the representatives of his company?

A. None whatever.

(Mr. Johnson objects to the testimony of this witness, and to any other future testimony upon an issue of fact between the Pullman Palace Car Company and the Central Transportation Company, as

to whether or not there was an agreement between those two companies, that there should be an equitable share of the future revenue to be derived from the Pennsylvania Railroad contract paid to the Central Transportation Company. He deems that the court refused to take jurisdiction of the bill on that ground. He will insist that the issue of fact now pending on the common-law side of the court, shall be tried, and that this case is not the proper case in which to take that testimony. Subject to this objection, which is meant to apply to this and all other witnesses testifying to similar facts, he cross-examines.)

222 Cross-examination by Mr. JOHNSON:

Q. You have referred to your testimony in a prior case. Do you refer to an *ex parte* affidavit which you signed and swore to which is to be found on pages 21, 22, 23, 24, 25, 26, 27 and 28 of a book called "Complainants' Affidavits"?

A. I do.

Q. Was that affidavit your own phraseology?

A. I think it was dictated to a shorthand writer.

Q. By yourself?

A. Mainly by myself.

Q. Who was present when you dictated it?

A. That is more than I can recollect.

Q. Who was the shorthand writer to whom it was dictated?

A. I think Mr. Isham was the counsel who examined me.

Q. What was the name of the shorthand writer, that I may call him, for the purpose of showing whose phraseology that affidavit was? Please give it to me.

A. I do not know any name, unless it might have been Mr. Bullitt's shorthand writer.

Q. Was it at Mr. Bullitt's office?

A. I think it was. I know it was.

Q. Who made the dictation—you, or Mr. Bullitt, or some one else?

A. The dictation is mainly my own.

Q. Look at the affidavit which I now show you, at pages 22 to 28, and state generally what parts of it you dictated.

A. That would be impossible.

223 Q. Do you want to be understood as saying that this affidavit, as it reads here, is an affidavit dictated by you to a shorthand writer of your own motion, and that it is not largely the dictation of somebody else?

A. I will only say that it is from dictation and from subsequent examination, no doubt, with counsel in my effort to make my statements clear and understandable.

Q. If your theory is correct, part of this would be the dictation of yourself, and then counsel would intervene and dictate other parts. Is that what you want to put as the manner in which this affidavit was made?

A. You may put it in that form. I desire to say that whatever counsel have put in there, I have formally accepted.

Q. That is immaterial to the present question. I want to know how much of this is your phraseology, and how much you will say is the phraseology of counsel. Can you point to any parts of that affidavit which you will say was the phraseology of counsel? Please look it over.

A. I would not undertake to enter into any detail about it.

Q. Do you want us to have it taken as your testimony that you sat or stood in Mr. Bullitt's office and dictated the matter which is now here, and that after that dictation was finished, without change, it was reduced to longhand, and then signed and sworn to you?

(Objected to. The witness has not stated that it was dictated by him, but partly by him and partly by counsel, and that whatever counsel dictated he accepted.)

224 The WITNESS: By no means.

Q. Do you mean to say that the paper which was ultimately signed and sworn to by you was not a paper sent to you by counsel?

A. I say very decidedly that it was not a paper sent to me by counsel.

Q. Where did you get the paper which you signed and swore to?

A. In Mr. Bullitt's office.

Q. Did you go there for it?

A. No, sir; I think it was all taken down at the same interview—at the one interview.

Q. It could hardly have been signed and sworn to by you there, for it had to be reduced to longhand. Under what circumstances did you physically sign the paper which was your affidavit produced in court?

A. I can only answer that by saying that it was signed in Mr. Bullitt's office, I think.

Q. Did the phonographer, after the dictation, read over the matter that had been dictated before you left the office?

A. No, sir, I read that over myself—the whole thing, very carefully.

Q. How—in the shorthand notes?

A. No, sir, in the longhand notes.

Q. Did you wait until the longhand notes were reduced?

A. I cannot say as to that particularly.

Q. Do you know whether the longhand notes, as they came, were the transcripts of the dictations which you and counsel had made at the office at the time you were there, or whether there were changes in them?

225 A. As a matter of course, I am not familiar with shorthand, but I am certainly very familiar with what I was then testifying to, and when it was reduced to longhand I read it, I can assure you, very carefully.

Q. But what I want to get at is the paternity of your affidavit. Is the affidavit, as you signed and swore to it, the affidavit as it was dictated by you and by counsel, or is it the affidavit that was dictated by you and by counsel, altered after the dictation?

A. I cannot answer your question in any other form than I have already answered it.

Q. You remember, when you commenced your testimony yesterday, that you suggested that you would like to read that affidavit, did you not?

A. I did.

Q. You remember that I said I thought you ought not to do it, and requested that you would not, as it was not a cotemporaneous paper, and that your testimony then went on without your being allowed that privilege?

A. Yes, sir.

Q. Will you please tell me how you became possessed of the affidavit which you have today said you subsequently read?

A. I obtained that from Mr. Dickson.

Q. Did you tell him what you wanted it for?

A. I presume he knew.

Q. Did you not know from the objection that I made, that I wished you to testify from your recollection, unaided by a paper which had been produced at a much later period than the facts that it covered?

226 A. I claimed it my right, as any witness would.

Q. Did you not know that when the objection was made by counsel it was so far acquiesced in by counsel on the other side that they did not permit you to refresh your memory?

A. I do not recognize their right to determine for me in my actions as a witness when my oath is to tell the truth.

Q. Did you tell counsel that you wanted this paper for the purpose of reading it over?

A. I did.

Q. Did you take it home with you?

A. I did.

Q. You read it over very carefully?

A. I read it very carefully this morning.

Q. Studied it up?

A. I cannot say that. I read it over very carefully.

Q. With whom have you conversed since our last adjournment concerning the subject-matter of what you have testified to today?

A. With Mr. Isham and Mr. Dickson.

Q. Did you go over the whole subject-matter that you have now testified to today?

A. We went over the whole subject-matter of my examination.

Q. You heard yesterday the objections that I made to Judge Isham's questions as leading, did you not?

A. I heard you object.

Q. You saw the difficulty he experienced under those objections in so framing questions as to elicit answers, did you not?

A. I heard your objections, but, as a matter of course, I
227 paid very little attention to their object or purpose.

Q. Notwithstanding that, you then went over the whole subject-matter of your testimony between yesterday, when your testimony closed, and today?

A. I did.

Q. How many shares of stock did you own in the Central Transportation Company in the latter part of the year 1884?

(Objected to as immaterial.)

A. Ten shares.

Q. You own no shares now?

A. No, sir.

Q. You were aware, and are aware, of the fact that the conduct of the board of directors of the Central Transportation Company was bitterly criticised by the stockholders?

A. No, I am not.

Q. You did not know that fact?

A. No, I did not know that fact.

Q. Did you think that it had been favorably commented upon by them?

A. I knew that they had rejected the contract.

Q. Look at the agreement that is set out commencing on page 47 of the bill, and state whether you remember that agreement.

A. I do.

Q. That was an agreement which was approved by your board of directors, was it not?

A. I think it was; yes, sir.

Q. Was it an agreement which was approved by them with the intention of binding the company, or was it an agreement
228 which was approved by them only to be binding upon the company upon approval of the stockholders?

(Objected to as immaterial.)

A. We were acting in this matter under a resolution of the stockholders. My recollection of that resolution is that the contract was to be reported to the meeting of the stockholders for their action. It could only be, I presume, binding upon the company, and such is my understanding, upon the approval of the stockholders.

Q. Was not that fact communicated to Mr. Pullman?

(Objected to as immaterial.)

A. I do not know.

Q. How is it that your memory suddenly fails as to that important matter?

A. My recollection is, Mr. Pullman was present during much of those negotiations, and his counsel and counsel of the transportation company.

Q. Don't you know whether, or not, it was understood between the board of directors and Mr. Pullman, representing the Pullman Company, that that contract could only become binding upon the company if the stockholders approved it?

(Objected to as irrelevant and immaterial.)

A. I cannot say what understanding Mr. Pullman and ourselves had in regard to it. We were acting, or, at least, I was acting, so

far as I was concerned, with the full knowledge of the resolution of the stockholders.

Q. But can't you tell me, having testified so minutely upon various points, what the understanding between Mr. Pullman on
229 behalf of his company and your board of directors was on the subject of that contract—whether it was to be binding at once, or whether it was to be binding when it was approved by your stockholders?

(Objected to as immaterial and irrelevant.)

A. I cannot answer that question in the manner you put it.

Q. Why can't you?

A. I can only say that the resolution of the stockholders, under which the board was acting, was there before us. Without knowing as a certainty, I presume Mr. Pullman had notice of it, and our action at the board was taken in accordance with the resolution of the stockholders.

Q. That is, that it was only to be binding when the stockholders had approved?

(Objected to as above.)

A. Such was the resolution.

Q. Did you ever pretend that Mr. Pullman, or did your board of directors attempt with Mr. Pullman to make any binding contract with him until the stockholders had approved?

(Objected to as above.)

A. Certainly I did not.

Q. You were aware that the stockholders had passed a resolution to the effect that any modification of the contract should be approved by them, were you not?

(Objected to as above.)

A. Yes, sir.

Q. Did you, or did you not, in all your actions act upon the faith of that resolution?

A. I certainly did personally.

230 Q. Did you ever give Mr. Pullman, or did you ever hear any member of your board of directors give Mr. Pullman any intimation that they intended to act, except in pursuance of that resolution?

(Objected to as above.)

A. Without any distinct recollection on that matter, I can only say that he could scarcely have been unadvised of the fact; but I have no recollection of his being specifically notified by any member of the board.

Q. When the final resolution of your board was passed approving of that contract, it was with the distinct agreement and understanding on the part of your whole board that it should have no binding effect upon the company until the stockholders had had the opportunity to approve, wasn't it?

(Objected to as above.)

A. Such was my understanding, and I presume it was the understanding of the rest of the board.

Q. What representation did Mr. Pullman make to you as to the net revenue which he would derive from the new contract with the Pennsylvania railroad?

A. He represented that he would not realize over six per cent. upon the amount of capital that he had in carrying out its terms.

Q. What capital did he represent to you he had invested?

A. I do not remember; his figures were all there before us.

Q. Still I would like to know?

A. I cannot remember the figures, there were so many of them.

231 Q. That he would only realize six per cent. upon the whole capital of the Pullman Company, or upon the capital which was invested in that business, or what?

A. I presume the capital that was invested in his equipment and the management of the cars operated over the line of the Pennsylvania railroad.

Q. Did he tell you what the value of that equipment was, or give you the slightest intimation?

A. Oh, yes; his figures were all there.

Q. Give your recollection as well as you can.

A. It is impossible for me to state that.

Q. Is it impossible for you to give us any information in figures as to what Mr. Pullman told your board was the net revenue which he would derive from that contract?

A. I could not undertake to give you those figures in detail at all.

Q. Then in determining the question, concerning which something was asked you a little while ago, whether it was true that Mr. Pullman ever deceived the board of directors in his statements, you are unable to enable us to verify the truth of his statements by telling us what those statements were?

A. I would not consider those as the personal statements of Mr. Pullman. They were the statements from his books of account by his auditor.

Q. Presented by him?

A. Presented by his auditor.

Q. How was his auditor able from his books to give you
232 any statement of his net earnings, when the contract with the Pennsylvania Railroad Company had not yet gone into force?

A. It did not presume to do that. As I have before stated those were estimated.

Q. How was the auditor able to estimate from his books when the contract had not been in operation? Mr. Pullman, I can understand, might estimate; but how could the auditor, whose duty it was to keep books of account, give you an estimate when those books of account did not cover the subject?

A. Well, I do not know any other method than of taking the two

contracts—the old one, which had expired, and the new one then made, and eliminating from it the revenue that they had derived from sources that were cut off by the new contract.

Q. That is one way. Now, what did Mr. Pullman tell you he had been making under the contract as it stood before the modification?

A. I do not remember. I do not know that that question was ever asked him to my knowledge.

Q. As much as $600,000?

A. I do not know that the question was ever asked him. We were always paid our $264,000.

Q. But still you know you were struggling with the problem of how much you ought to get. You say that the mode of arriving at it was to take what had been made, and eliminate from it the revenue which was lost, and get at the result. Now, can you give us any of the steps of that calculation? First, can you give us any statement of what Mr. Pullman said he had made before, and
233 second, can you give us any statement of what he said he would lose?

A. There were several items in the old contract—I think car service, car repairs, car cleaning, mileage—that Mr. Pullman was allowed for under the old contract, that were not included in the new contract. Also, my recollection is that he was deprived of the parlor-car service.

Q. While I do not, of course, expect you or any man at this period of time to give me the details of the diminished revenues, can you not give me some faint idea of what he said was the gross diminution of revenue by reason of those changes?

A. No, I would not venture a statement on that subject.

Q. How did you get at this $66,000 per annum reduction from $264,000? How did you satisfy your mind that that was a fair share of rental when you did not know what the rental was?

A. We had the figures of Mr. Pullman there, showing us the capital that was involved in these cars—all the elements of expense and matters of that kind, showing us what probably would be the result of the operation of a new contract.

Q. Is your memory utterly blank as to what those figures were in substance?

A. Entirely blank.

Q. Whether they were $66,000, or $100,000, or $200,000, you utterly fail to remember?

A. They are an entire blank to me. I can't remember them at all.

Q. What was your idea of getting at a fair basis? What
234 was the proportion that you settled on? Did you think you were getting one-half of the net revenue in the $66,000, or one-third, or all, or a quarter?

A. We thought we were getting one half.

Q. Then I may take it that Mr. Pullman's statements to you were that the net rental was $132,000, and that you were getting one-half, may I not?

A. I have no doubt that was so.

Q. Then if it should turn out to be a fact that when Mr. Pullman said to you that the net revenue was $132,000 it was $264,000 and upwards, he would have deceived you, wouldn't he?

A. If he had made such an absolute representation he would have deceived us.

Q. So that you today are not sufficiently in possession of information as to what Mr. Pullman's net revenue is from the operation of that contract to say that the figures he gave you were true or false, are you?

A. I have no knowledge whatever of the results of the operation; but, understand me, the figures then given were entirely estimate figures.

Q. Estimated by the other side altogether?

A. Entirely.

Q. You have spoken about an expert. Who was the expert who examined these figures?

A. I do not know that I can remember. Mr. Wolverton was an expert in those matters.

Q. He was a director. I thought you spoke of an expert outside of the board. Was there any expert outside of the board?

A. I do not remember, particularly.

235 Q. May I not take it that, at this moment, you are not able to say that there was an expert outside?

A. I am not able to say that there was an expert outside of the board.

Q. What was Mr. Wolverton's business?

A. I really do not know. He was connected with some operation in New York—the transportation business.

Q. In what way?

A. I really do not know.

Q. Do you know how many shares of stock he held in the company?

A. I do not.

Q. Why would you speak of him as an expert if your knowledge of his exact business position is so slight as you now state it?

A. He seemed very familiar with railroad figures, as did Mr. John A. Wright. Mr. John A. Wright examined them very closely.

Q. Did they have the result of this examination in figures which they presented to your board?

A. The figures were before us there.

Q. How many contracts with Mr. Pullman were ever adopted by your board of directors?

A. But one.

Q. That was the contract which I have just shown you?

A. Yes, sir.

Q. Did your board of directors ever enter in any way, shape, or form, into any other contract with the Pullman Company?

A. Do you mean by formal resolution?

Q. I do.

236 A. I think not.

Q. When you have spoken of an agreement through the course of your examination-in-chief, do you mean any agreement which resulted from any resolution by the board of directors?

A. No, because during all these negotiations there was nothing that could be put in the form of a resolution.

Q. What agreement of modification did Mr. Pullman on behalf of his company ever enter into with the Central Transportation Company?

A. Do you mean in writing?

Q. I mean in writing, or an oral agreement binding his company.

A. In writing, the contract that you have referred to.

Q. In writing or orally, any other?

A. Verbally with reference to his agreeing not to annul that lease—to waive his right to annul the lease upon our agreeing to accept the fair share of his net earnings under a new contract.

Q. How is it that you failed to recall that yesterday after Judge Isham had, by repeated questions, endeavored to get you to say that there was a consideration put upon his withdrawal of his notice?

A. Well, I do not know. I seemed to answer his questions as I understood them.

Q. Did you not say over and over again that there was no condition annexed to the withdrawal, or no condition upon which his withdrawal was made?

A. I do not remember. If it is so, it is a mistake.

237 Q. What vivified your memory between yesterday and today?

A. My reading of the affidavit and my conversation with counsel.

Q. Then your testimony today of a fact concerning which you were not able to testify yesterday results from your reading the affidavit prepared under the circumstances that we have elicited and your conversations with counsel; is that so?

A. My recollection is recalled upon those matters that they especially wanted information about, and which is in every respect true.

Q. Will you tell me the date of Mr. Pullman's entering into the agreement that he would not annul the lease, and that he would pay you in future a fair proportion of what rental might be earned?

A. I can fix no date.

Q. State about when?

A. The time was prior to the expiration of the old contract.

Q. You think it was at that date, do you?

A. No, not at the date, but prior to the expiration.

Q. About how long prior?

A. As I have said before, our interviews were so frequent I could not say.

Q. Was it at a board meeting, or at a meeting of the committee?

A. Both.

Q. If I produce the minutes of your board of directors and the report of your committee, will you point me anywhere to any

238 minute or any reference in the committee's report to any such agreement?

A. I have no recollection that the committee ever made any formal report.

Q. Was there not a very formal report made by the committee of its negotiations and conversations with Mr. Pullman?

A. There may have been. I have no special recollection of it.

Q. State the words, or the substance, as well as you can recall it, of what took place between Mr. Pullman and the board of directors when that thing was done.

A. Do you mean his waiving of the right to annul the lease?

Q. Yes; give it as well as you can recall it?

A. I will not pretend to give any words in detail.

Q. Give the substance?

A. The substance I have already given.

Q. Yesterday you were not at all certain that there had been a notice given; do you remember that fact?

A. No; nor neither am I today.

Q. Then, you are not certain that there was a notice given by Mr. Pullman of his intention to annul either verbally or in writing?

A. Verbally, unquestionably. In writing my recollection is vague and uncertain.

Q. State about when, orally, he gave you notice, and just as well as you can recall the substance of the notice.

A. I will not pretend to fix the dates, nor the exact lan-
239 guage of those interviews. I have only given you, as near as I can remember, the substance and the reason.

Q. Even though it may be repetition, I ask you to repeat, as well as you can, and give me as good an idea as you can of the time and substance of any notice that Mr. Pullman gave you.

—. Our lease with Mr. Pullman was for a term of ninety-nine years. The only saving clause in that lease was the eighth clause. It was when Mr. Pullman ascertained his inability to make such a contract as he wished with the Pennsylvania Railroad Company, the date of which I will not pretend to give, that he claimed the right, under that eighth clause, to annul the lease, and turn the demised property over to us. That was on more than one occasion. We all felt the full force and effect of it, and for reasons which I have stated, we protested against the annulment. Mr. Pullman, who was represented by counsel, and I suppose shrewd enough himself to see the point, was not willing to leave the matter run on without some distinct understanding with reference to the old lease and its terms, and I presume, very fairly, for that reason, he insisted upon his right to annul it, unless—we certainly so understood it—unless the transportation company would accept, in lieu of it, some other consideration to be thereafter determined. Beyond that it is morally impossible for me to give you any clear statement.

Q. Did your board of directors pass any resolution of any sort or kind concerning what you say was an agreement?

A. I have no recollection of any resolution being passed to that effect.

240 Q. Was it not during the course of the negotiations that Mr. Pullman practically threatened that, unless the board

would agree upon some modified contract, he would annul the lease?

A. No. Mr. Pullman never threatened, for he seemed as anxious to obtain a contract as we possibly could be.

Q. But that if your board would not agree to some modification, he would annul the lease. Was not that the shape of it?

A. There was no threat in the matter.

Q. I will abandon the word "threat," and ask did he not hold out persuasion?

A. Mr. Pullman simply said that it would be impossible for him to pay $264,000 under any new contract that he could possibly make with the Pennsylvania Railroad Company.

Q. Was not the course of your negotiations this: that Mr. Pullman was endeavoring to make the best bargain he could with the Central Transportation Company for a reduction of rental; that he was holding out all the inducements he could to induce you directors to agree to it, and that as the result of all, that there came the contract of February 27th, which was to be submitted to the stockholders?

A. Mr. Pullman's efforts were entirely on his own behalf, and he certainly would make the very best possible contract for himself that he could. In such a contract, as a matter of course, the transportation company would necessarily have its advantage.

241 Q. And there were innumerable negotiations as to how much that proportion should be, were there not?

A. No, not innumerable.

Q. Were there not a great many?

A. As I have said, there were various propositions made backwards and forwards; but we had nothing definite to act upon until this contract was actually made.

Q. Was what Mr. Pullman said about his intention to annul, or his desire to annul, or his right to annul, said before the annual meeting of the stockholders which preceded the directors' resolution of February, 1885; that is, was it said before the meeting of stockholders of May, 1884?

A. It was prior to the meeting of the stockholders, and I suppose subsequently, too.

Q. So that this notice which you have spoken of, by him, was given before May, 1884?

A. No, I will not say so.

Q. Will you say that it was not?

A. No; possibly it may have been in 1884 or 1885. The date I can't remember.

Q. You will not say that it was not before May, 1884?

A. No; I will say that it would hardly go back to 1883. It may have been in 1884 or 1885.

Q. You have spoken of an agreement about paying what would be a fair basis at the time of that agreement, which you say was not an agreement, that resulted from any resolution of the board of directors. Did that agreement about a fair basis reach any idea mutually accepted as to what would be a fair basis?

242 A. Well, we all concluded that that would be a fair basis.

Q. But at the time you say this so-called agreement was arrived at, did you also arrive at any mutually accepted idea as to what would be a fair basis?

A. No, sir. The verbal agreement that I speak of was made long prior to the new contract between the transportation company and Mr. Pullman, in which the $66,000 was specified.

Q. Then what would be a fair basis of future net earnings did not attain the dignity of an accepted idea that that fair basis was to be one-half, one-quarter, one-third, or all, or what percentage?

A. Well, we presumed that a fair division would be about right.

Q. But a fair division leaves us still in the dark as to what percentage, or fraction, would be a fair division. What was it to be—half, quarter, or what?

A. It was fixed ultimately, I suppose, as being three per cent. upon the amount of our old capital stock.

Q. I am going back to an anterior period when you did not know what he was going to earn. Did you arrive, in anticipation of that, at any idea accepted by both sides as to whether that fair basis was to be the whole of the net earnings, or half, or quarter, or one-third?

A. We presumed that the figures that were shown us—the estimated figures that were shown us would be, perhaps, correct—would be correct.

Q. But that would still leave the question of what share you were to get open?

243 A. No, that opened up the net amount of Mr. Pullman's revenue under that contract, and it was what would be a fair and equitable share of that net revenue.

Q. But did you arrive at the idea accepted by both as to whether a half, a quarter, a third, or a whole would be a fair share?

A. I presume the board considered that one-half would be a fair share of it.

Q. Did Mr. Pullman say anything at that early period as to what would be a fair share?

A. No doubt he did. But those were discussions among our own board.

Q. How did you get at a half, considering that you had put in the bulk of the stock and all the contracts?

(Objected to, because the fact does not appear that they had made any such contribution.)

A. If you will explain what you mean by "all the contracts," I will answer the question.

Q. I refer to the contracts with the Pennsylvania railroad, and equipments.

A. In the course of fifteen years, the entire equipment that the transportation company had turned over to Mr. Pullman was changed, and new cars put upon it involving a much larger cost, I suppose, than the old ones. The contracts that had been assigned had mostly expired, and looking at the estimated results under the

new contract with the Pennsylvania Railroad Company, we formed our conclusions.

Q. What books of the Pullman Palace Car Company did you ever see or examine?

244 A. I never examined any of them.

Q. What proof was ever offered to you or shown to you that under the modified contract the net revenue would be less than $264,000?

A. Nothing but the statements from their books—their own books. We had no figures before us, except figures from their own books.

Q. Who had prepared those statements, do you know?

A. I presume their auditor.

Q. By your modified contract you undertook to deal with the cars of this company; did you ever make any inquiry to find what extent the cars of the Central Transportation Company had had other cars substituted for them by Mr. Pullman?

A. That was a subject of frequent talk among ourselves.

Q. What investigation did you make?

A. The result was that there was, I do not think, a single car that had been originally turned over to Mr. Pullman in use upon the Pennsylvania Railroad Company during the latter years of the contract he had with them. I remember Mr. Pullman saying that there were a number of old cars stored at Altoona.

Adjourned to 11.30 a. m. Saturday, October 29, 1887.

245 SATURDAY, *October* 29, 1887—11.30 a m.

Present: Messrs. Burry, Dickson and Isham, for complainants; John G. Johnson, Esq., for defendants.

Mr. WILLIAM J. HOWARD stated as follows:

I desire to correct my prior testimony, though it is not a very important matter. I have confounded the place of taking the affidavit that you referred to last night with the previous one in the same case. The affidavit referred to yesterday was taken in the Pullman office and written out, and brought up to my house by Mr. W. W. Dougherty, the alderman, who administered the oath.

Cross-examination.

By Mr. JOHNSON:

Q. Do you know who wrote it out?

A. I do not.

Q. Do you know who dictated it originally?

A. I dictated it.

Q. All of it?

A. No; it was made between counsel and myself, in the usual form.

By Mr. ISHAM: You were present all the time when that affidavit was dictated, were you not?

A. Yes, sir.

Q. And you participated in the dictation?
A. Yes, sir.
Q. Did you read it over carefully?
A. Yes, sir; very carefully, after Mr. Dougherty brought it to my house on Broad street.

246 By Mr. JOHNSON: Will you say when it was brought to your house that it did not contain some things in it that were not in the original dictation?

A. Oh, well, I cannot say that. There may have been omissions, but they would be unnoticed by me, perhaps. The affidavit that was brought to my house, and sworn to by me, was examined carefully at the time, and acquiesced in fully.

By Mr. ISHAM:

Q. So far as you know, the affidavit that you signed was the affidavit as it was dictated?
A. It was the affidavit as it was dictated.

(Mr. Johnson calls for the stenographer's notes of the original dictation.)

By Mr. ISHAM:

Q. Do I understand from that call that the affidavit is thereby in evidence?

Mr. JOHNSON: I will take all the responsibility attaching to the call. I make the call, and when it is replied to by counsel, that will give them all the legal rights resulting.

W. J. HOWARD.

Sworn and subscribed before me.

SAMUEL BELL,
Special Examiner.

247 WILLIAM S. LANE, having been duly sworn, was examined as follows:

By Mr. ISHAM: You are a lawyer?
A. I am; yes, sir.
Q. Where do you reside?
A. In Philadelphia.
Q. How long have you been engaged in your profession?
A. I was admitted in 1843—forty-four years ago.
Q. Do you know the complainant, The Pullman Palace Car Company, and the defendant, The Central Transportation Company?
A. I do.
Q. Referring to the time about January, 1885, and before that time; what had been your relations to the Central Transportation Company?
A. I had been a director in the transportation company for several years, and was at that time. I was also a stockholder.
Q. Do you remember during what years you were in the board prior to that?

A. My attention has not been called to that. I was for a number of years; I could not say how many. Several years.

Q. Four or five?

A. I should think so.

Q. Were you, during that period, familiar with the affairs of the Central Transportation Company and its relations with the Pullman Palace Car Company; and if so, to what extent?

248 A. I think I was—as much so as any person could be in the position I held. I was also solicitor for the Central Transportation Company. They had some litigation in regard to patents, and one thing and another; and I understood the situation in a general way, probably, as well as anybody.

Q. You were actively concerned during all that period, in its conduct and management?

A. I was; yes, sir.

Q. You knew and were familiar with the lease subsisting between the Central Transportation Company and the Pullman Palace Car Company?

A. I was. I read it over a great many times.

Q. And with the contract between the Pullman Palace Car Company and the Pennsylvania Railroad Company?

A. Yes, sir.

Q. The leases under that contract which I referred to are the ones which are exhibits to the bill of complaint in this case. You are familiar with them?

A. Yes, sir; I am familiar with the substance of both of them.

Q. State whether your board of directors of the Central Transportation Company, prior to the expiration of that railroad contract on January 27, 1885, received any communication from the Pullman Palace Car Company with reference to their probable action upon the expiration of that contract.

A. They did.

Q. State what it was.

249 A. Some time before the railroad contract expired, which, I think, was the 27th of January, 1885, the Pullman Company addressed a written communication to the transportation company indicating or stating its purpose to cancel and annul the lease, and to return the demised property.

(Mr. Johnson objects to the witness stating the contents of a written instrument.)

The WITNESS: There was a communication in writing to that effect, declaring their purpose to annul or cancel the lease; and return the demised property in view of the difficulties that had been encountered in renewing the railroad contracts; that it was not expected that the Pullman Company could make a contract, so far as they then knew, that would justify them in paying the Central Transportation Company a rental of $264,000 a year.

Q. What were those difficulties in the way of making such a new railroad contract with the Pennsylvania Railroad Company?

A. The Central Transportation Company appointed a committee

of the board to negotiate with the Pullman Company and to assist as far as we could the Pullman Company in getting a favorable contract from the railroad company. In the lease between the transportation company and the Pullman Company there was a provision requiring us to aid the Pullman Company in that way. We had every disposition to do so, although we thought ourselves that we did not have much power in the premises. The difficulties were as represented to us by Mr. Pullman and General Porter and the Pullman counsel, and also from the railroad people themselves, that that contract had become so onerous that they could not live under it, and would not renew it, nor anything like it. This was communicated in that way, and we had a great many meetings between the transportation company and the Pullman officials and counsel. The subjects that were discussed were two: first, what, if any, contract could be made with the railroad company; and next, if none could be made, what were the rights of the Pullman Company under the lease with the transportation company?

Q. Where were those discussions had?

A. They were had at the joint meetings of the two boards of the two companies.

Q. Meetings of your board of directors?

A. Part of them were at meetings of the board, but generally of the committee. Some were at meetings of the board—one or two.

Q. What committees do you refer to?

A. I refer to the committees appointed by the Central Transportation Company to meet, and negotiate with the Pullman Company for a continuation of the lease. In these interviews and discussions that we had, the fact was known to all of us, the Pullman people and ourselves, that the railroad company would not renew the contract, and if they made a contract with the Pullman Company at all for the running of the sleeping cars, which they indicated would be that alone, and not the palace or chair cars, which they reserved to themselves—but if they made any contract for the sleepers it would be on entirely different terms from the old contract.

251 We had, during these negotiations, up to the time when the contract was to expire, many drafts in print, of the proposed new contract. As it was changed, from time to time, it was reprinted and presented to us through the Pullman officials.

Q. State whether this notice to the transportation company of the determination of the Pullman Company to annul the lease was stated verbally also to your board of directors.

A. Let me finish my answer first, if you please. You asked me what were the difficulties. The difficulties were in making a new contract between the Pullman Company and the Pennsylvania railroad, that the railroad exacted terms which Mr. Pullman was not willing to receive or take, and he stated to us that he did not see how it was possible for him to continue to operate on the Pennsylvania railroad and its lines under any terms that had been offered, or that it was probable could be obtained, and pay any rental to the

Central Transportation Company; and therefore he availed himself of his option of determining the lease.

I have now stated the difficulties about this new contract. The difference in substance was this. Under the old contract between the Pullman Company and the Pennsylvania Railroad Company, as the contract was first written and acted on, the railroad company was required to pay for all the repairs of the cars, and for renewal of such as were mashed up or burned, etc.; and also for the cleaning of the cars. That went on for some years, and for some reason they found the accounts, as I understand, rather troublesome, and
252 therefore they made a new arrangement which they acted under for several years before the termination of the lease. That was in lieu of keeping accounts for those repairs and renewals, and so forth. The railroad company allowed the Pullman Company a certain rate, that they call mileage, or wheelage, for the distance run. I think it was three cents a mile; that is my impression; I would not say positively.

(Objected to as irrelevant.)

The WITNESS: Under the old contract the Pullman Company were not liable for any losses, injuries, or accidents. Under the new contract, as it was finally made, and came down in these different drafts to us, to the final end, the Pullman Company received nothing for repairs, and no mileage, and were made liable by the contract for all losses or injuries that happened inside of the cars. Those were the main differences. The wheelage or mileage that was allowed, and the cleaning, amounted in a year to a large sum of money, and we had the figures for all that.

Q. Do you remember about how much?

A. My belief is that it amounted to about $360,000 a year.

Q. State whether this declaration of the purpose of the Pullman Company to annul the lease was made verbally, also.

A. Yes, sir. This communication that I speak of in writing was sent to the board through the mail, and it was laid by the secretary before the board. This was some time, though not a great
253 while, before the old contract was to expire; some weeks, I should say, or probably a month, something like that.

Subsequently, and shortly before the contract was to expire, we had a meeting of the transportation company and the Pullman people. Mr. Pullman was present, General Porter was present, Mr. Bacon was present, and Mr. Atterbury, a lawyer from New York, I think, was present, and Mr. Goodman, the superintendent of the Pullman Company, was also present.

Q. Was this at a meeting of the board of directors of the Central Transportation Company?

A. This was at a meeting of the committee; it was held in the Continental hotel. Whether there was any other person present from the Pullman Company, I am not sure; there may have been others; the transportation committee were also there. At this meeting of the two companies in this way, Mr. Pullman referred to the fact of the communication that had been addressed, and stated the

reasons for it—that it appeared, up to that time, that it would be impossible to get a contract from the Pennsylvania Railroad Company that would justify or enable the Pullman Company to continue to pay any rental to the transportation company; and therefore they had no alternative, although he regretted it, except to end the lease; and therefore that communication had been sent; and that now they had come—for the auditor was there, also, of the Pullman Company, whose name I have forgotten—it was the auditor, and he said that they had come, and that his counsel had been instructed to prepare whatever they deemed necessary,
254 etc.; that they were now present, and had what they had prepared; that the purpose, now, of bringing them and the auditor, etc., was to arrange the details for the surrender of the demised property.

Q. State whether, prior to that time, the purpose of the Pullman Company to annul the lease had, or had not been a matter of discussion between Mr. Pullman and the board of directors of the Central Transportation Company.

(Objected to.)

A. Yes, sir; for a long time before that, on many occasions; but it had not culminated to a definite point until at or about this time that I speak of. It had, however, been discussed and said by them, that the probability was that the lease would have to end, from all that they could learn from the Pennsylvania railroad.

Q. Were these discussions between the Pullman representatives and the committee of the board of direction, reported by the committee to the directors at their meetings?

A. Always; everything in substance that passed was reported to the board.

Q. Was the action of the committee reported there?

A. We had not taken any action, except down to this time, when it came to a culminating point, when they wanted to arrange for the details of the surrender; but all the matters that were discussed, and the propositions back and forth, were all reported to the board, and discussed by the board.

255 Q. State to what extent the members of the board, at those meetings, acquiesced in and approved the action of the committee.

(Objected to, as irrelevant.)

A. There was no dissent, whatever, by anybody, at any time.

Q. After various occasions in which the committee made these reports to the board of directors, was their subsequent conduct and negotiations and discussions with the Pullman Company on the same line of procedure that they had been before reported to the board?

A. Yes, sir.

Q. And with the knowledge and approval of the board of directors and the members of them as they met there?

A. Yes, sir; repeated discussions and repeated verbal reports back to the board.

Q. What was the attitude of the Central Transportation Company toward the Pullman Company in reference to this matter of annulment of the lease?

(Objected to, as irrelevant.)

A. We very earnestly and persistently opposed it, and urged the continuation of the lease at all times.

Q. Do you remember the reasons which influenced you to oppose it?

A. Oh, yes; they were too apparent for discussion; we all understood them.

Q. State them briefly?

A. We were fully advised, and knew as a fact, that if the contract ended between the Pullman Company and the Pennsylvania
256 Railroad Company, the Pennsylvania Railroad Company would make no contract with the Central Transportation Company to run sleepers over their line and connecting lines, because we had not any proper equipments or organization or really capital to do it, and we had no purpose of doing it. We knew we could not. We admitted that as a fact which was too apparent to all of us to gainsay. We knew that we would not be allowed any contract to run over the road; we were sure of that. We had one hundred and nineteen cars that were leased to the Pullman Company. They had been in use for a long time. I think the contract with the Pennsylvania railroad that was about to expire was for fifteen years, so that these cars, as long as they were fit to be used, had been in use and then others substituted. We had one hundred and nineteen cars, and I think there were sixteen leases that were assigned to the Pullman Company in the first instance.

Q. By leases do you refer to contracts?

A. I mean on other roads, for running cars over other lines of roads.

Q. The contracts that were assigned to the Pullman Company by the Central Transportation Company in their original lease?

A. Yes, sir; we had what remained of those that had not expired, but if Mr. Pullman persisted in his purpose, and the option which he had to terminate the lease with us, then we would have had, as we claimed, the right to have reassigned to us, and turned over with the cars also, the leases that were still in force that we had
257 assigned to him. We did not, however, attach much importance to those that remained in force. Some of them had expired. The Baltimore and Ohio, probably, was the most important of any, and they had been running their own sleepers for some considerable time. We did not attach much importance to those, but whatever remained yet in force we would have been entitled to retransfer. Those leases and the 119 cars were all the equipments or stock that we had for operating the road. Then we had a fund that we had retired—a contingent fund or reserve fund from the annual dividends. That amounted, at that time, to $600,000 or

more, though I don't remember the exact amount. It was $600,000 or $700,000, probably. That belonged to the stockholders.

Q. The Pullman Company had nothing to do with that?

A. No, I am only speaking of the transportation company itself. That was all the means that we had to go into the sleeping-car business; that 119 cars, such as they were. Well, that was a matter of discussion—there was a great deal of discussion about it, as to what kind of cars, or what cars, we were to have if they terminated the lease with the Pullman people. We claimed that we were entitled to 119 as good cars as they had on the Pennsylvania lines. They denied that right, but still we did not come to any decision on that point.

Q. What contracts were there remaining in force, except the Pennsylvania contract?

A. I could not tell you that. My recollection in general
258 is that in the first place there were sixteen of them. The Baltimore and Ohio contract had expired the same way. The Pullman Company was off, and had been for some time, and they were running their own sleepers; and some of the others had expired. How many remained in force I don't remember. There were, however, some of them. We did not attach much importance to them. In fact, they were not of much importance.

Q. The principal one was that of the Pennsylvania Railroad Company?

A. The principal one was that of the Pennsylvania Railroad Company. I meant outside of that.

Q. That expired in January, 1885?

A. Yes, sir.

Q. Coming back now to what was done in that state of affairs, was the lease canceled by the Pullman Company?

A. No, sir.

Q. Why not?

(Objected to as irrelevant.)

A. For the reason that the transportation company most earnestly and persistently opposed any such course.

Q. State as fully as you can what was done in view of that situation?

A. We did that all the way through, but when it came down to this time when these people were all present, as I tell you, and they had to fix upon the details for the surrender of the demised property, then was when we came to a point. Up to that time we had not. We then, as we formerly had done, resisted and opposed the Pull-
man Company's purpose to determine the lease, and urged
259 further effort towards making a contract with the Pennsylvania Railroad Company. There was no diversity of opinion in the Central board on that subject. It was a unity in every sense. Mr. Pullman said, then and there, on that occasion (objected to as irrelevant, and as voluntary), that it was impossible under the state of the case, as we all understood, as between the Pullman Company and the Pennsylvania Railroad Company, in relation to what might

or could be obtained in the way of a contract for him to close a contract with the Pennsylvania Railroad Company, unless we came to a definite agreement in regard to the terms of the lease between them and us. That lease, as it then stood, required the Pullman Company to pay us $264,000 a year. He said that that was utterly out of the question, and could not be thought of for a moment; that it could not be done; that they could not earn it, and could not pay it, and that therefore he must persist in their purpose and end the lease, and return the demised property. Well, we discussed the matter until a very late hour that evening, I think it was, and we finally came to this agreement—that if Mr. Pullman or his company would abandon their purpose of canceling and ending the lease with the transportation company, that we on our part would agree to abandon the $264,000 rental, and to receive whatever would be a fair and equitable proportion of the net earnings that could be made by the Pullman Company under the best contract that they could close with the Pennsylvania Railroad Company, and that was agreed upon by all hands, and acted upon ever after by the Central and by the Pullman, so far as I know.

260 Q. Did that matter occur in an interview between the Pullman representatives and the committee, or the board of directors?

A. This meeting that I refer to was between the Pullman representatives and the committee of the Central Transportation Company.

Q. Was the action of the committee in that respect reported by them to the board of directors at their meeting?

A. Yes, sir.

Q. What was the attitude of the board of directors at that time?

(Objected to, as irrelevant.)

A. There was no dissent, whatever, to anything that the committee did. They had, I suppose, faith in the committee, and there was no dissent. Everything was acquiesced in that we did.

Q. It was all acquiesced in, by all the members of the board?

A. Every member who was present. Sometimes, probably, the whole board was not present, but there was always a quorum, and it was always acquiesced in, whatever the committee had done. I will say this. There was no occasion or necessity for it; and I don't think that the committee ever made a report to the board, except verbal reports, except on one occasion. I was the chairman of the committee, myself, and I have a recollection, therefore, of it. I think that the reports of all that happened between the committee and the Pullman's representatives were made verbally to the board, except on one occasion, and that was at the very last; which

261 I think we made a written report of, and it is no doubt upon the minutes of the transportation company.

Q. After the committee had reported this action to the board of directors, and it had been acquiesced in by them, did the committee and the board continue their action with the Pullman Company

with reference to the negotiation of a new contract with the Pennsylvania Railroad Company?

A. Yes, sir; down to the very last moment, when we got the last draft.

Q. I understand you to say that their action was always upon the basis of that agreement?

A. Yes, sir; from the time that I refer to, which was shortly, or a few weeks at most, before the contract with the railroad company was to expire.

Q. Acting under that arrangement, did the Pullman Company put aside its purpose to annul the lease?

(Objected to, as irrelevant.)

A. They did.

Q. Did the Pullman and the Central Transportation Company, so far as it could, aid and co-operate in the negot-ation of a new contract with the Pennsylvania railroad?

(Objected to, as irrelevant and leading.)

A. Yes, sir; we did, so far as we could.

Q. The Pennsylvania Railroad contract, of which you have spoken, expired January 27, 1885?

A. Yes, sir.

Q. Did the Pullman Company continue to operate its service on the Pennsylvania lines after that time?

A. After the expiration of the old contract; yes, sir.

262 Q. And before the making of any new one?

A. Yes, sir.

Q. It went on after the expiration of that contract operating its service there?

A. Yes, sir.

Q. And continuing the effort to negotiate a new contract with the railroad company. The current contract expired on the 27th of January, and it was some time before any negotiations culminated in the making of a new contract with the railroad company. During that interim the Pullman Company continued its service over the Pennsylvania railroad, did it?

A. Yes, sir; as we were advised, with the understanding and agreement that any new contract that they might enter into should relate back and cover from the 27th of January; and so with the Central Transportation Company. Our contract was not made with the Pullman Company by the directors, I think, until about a month after the old contract with the railroad had expired, but by agreement with the Pullman Company the new lease—the modified lease with us—was to take effect from the 27th of January, 1885, when the old contract would expire.

Q. After you had made the agreement with the Pullman Company to abandon the old rental of $264,000, and substitute for it a share of the earnings that could be made under any new contract that could be made, did you subsequently have negotiations with

them for the purpose of settling and determining what the amount of that share to be paid should be?

(Objected to as leading.)

263 A. Yes, sir; we had.

Q. Was the amount of that fair share agreed upon at once, at the time that the arrangement to proceed for that rental in substitution for the other was made?

A. Oh, no.

Q. Why not?

A. Because we could not do it. We had not the data that we wanted. We did not know to a dead certainty what the terms of the railroad contract might be finally, and we had not the figures and information that the Central Company required of the business, under the old contract.

Q. Then the amount of that share was left to be determined?

A. It was left open for determination afterwards.

Q. When you should find out what the contract would actually be?

A. Yes, sir.

Q. State whether, after the making of the agreement, and coming to the understanding that you have spoken of, there was, at any time, any adverse action to that, or any action disapproving it by your board of directors?

(Objected to as irrelevant.)

A. There was not.

Cross-examination.

By Mr. JOHNSON:

Q. How many shares of stock did you hold in this company in the latter part of 1884?

(Objected to as irrelevant.)

264 A. I cannot tell you that. I owned at one time, and for a considerable time, I think about 360 shares, but I sold all of them before the old contract with the Pennsylvania railroad expired, I think, or about that time—all but forty or forty-odd shares.

Q. Were you aware of a resolution of the stockholders of the Central Transportation Company to this effect—passed on the 21st of April, 1884:

"Resolved, That the board of directors be, and they are hereby authorized to make a modification of the existing lease with the Pullman Palace Car Company, if in their judgment, modifications or changes may be deemed necessary, and to submit their action in that behalf to the stockholders for their approval"?

A. Yes, sir; I drafted that resolution and offered it myself at the stockholders' meeting, and it was adopted.

Q. To what extent, then, concerning a resolution which you not only were aware of, but which you drafted and presented, did you,

as a member of that board of directors, and the board of directors so far as you knew, in their official action conform to that resolution?

(Objected to, as involving a question of law.)

A. I believe I was the only lawyer connected with the board, and I suppose for that reason, the board asked my opinion upon that question.

Q. I did not ask for an opinion, I asked for your action?

A. I am going to tell you what we acted on.

Q. That is a roundabout way to tell me an opinion when I want action. Please answer the question?

265 A. I wanted to give you the whole case. I will give it to you as shortly as I can. So far as my action was concerned, as a director, and my opinion as a lawyer (and the board acquiesced in that, and acted thereon), it was, that the contract which was made by the board of directors with the Pullman Company, that is, the modified lease, would not be valid unless approved by the stockholders in accordance with that resolution. That is what I acted upon, and that was my opinion as a lawyer, given to the board, and the board acted upon it.

Q. Then the board of directors, from beginning to end, declined, as I understand, to make any binding modifications of the existing lease with the Pullman Company, until after the approval of the stockholders?

A. Well, it was understood. It was not discussed, but it was understood by all hands that to make a valid contract, it must be approved in accordance with that resolution by the stockholders.

Q. And that there should be no modification of the existing contract until it was approved?

A. None final. That would follow.

Q. That fact, I take it for granted, was communicated to Mr. Pullman?

A. I gave him my opinion that that was so.

Q. Then from what you told him he was informed that the board of directors would not make any final modification of the existing contract until after the approval of the stockholders?

(Objected to as irrelevant.)

A. I said to Mr. Pullman, intending him to understand my own opinion, and that of the board as well, that any contract that

266 we entered into with him, modifying the original lease required to be approved by the stockholders in accordance with that resolution; and unless approved, would not be a valid contract. He replied to that, that he was otherwise advised.

Q. Did you at any time profess, or did the board of directors profess, to make any modification of the existing contract which should bind the company until after the stockholders approved?

(Objected to as irrelevant.)

A. I can only say this, that there was no intention on the part of

any director, so far as I know, to make any contract other than in accordance with the resolution of the stockholders at any time.

Q. And that fact you communicated to Mr. Pullman?

A. Well, I cannot quite say that, I think; but I said to him what I have mentioned before, which was notice to him, undoubtedly, that any contract that should be made would be upon that condition.

Q. Therefore, when the board of directors had satisfied themselves that the 27th of February contract was a good one, they only agreed with him that it should be binding upon the company after the stockholders had approved?

(Objected to as irrelevant, and because the contract of February 27th is not any subject-matter of the direct examination.)

A. That was the understanding of the board.

Q. And with him, too, was it not?

(Objected to as above.)

A. Well, I could not say what his understanding was. I could say that he had that information.

267 Q. None of the board of directors ever professed to change their intention which you had indicated to him?

A. Not at all.

Q. So that after the board of directors had approved of that contract as satisfactory to themselves, they voted to submit it to the stockholders before it should be finally binding, did they not?

(Objected to as irrelevant.)

A. Oh, yes, undoubtedly. That was contemplated all the time.

Q. You sat in court during a considerable portion of the trial of the first Pullman suit, did you not?

(Objected to as above.)

A. Not very long. I went in and heard two or three witnesses examined.

Q. You heard Mr. Pullman examined, did you not?

A. I think not.

Q. Did you not hear Mr. Pullman testify there that that contract had been entered into as a binding contract by the company, and that the board of directors upon his statements so said?

(Objected to as above, and as not cross-examination.)

A. No, I don't think I heard that. I did not hear Mr. Pullman's examination. I heard that of some others that I was very much surprised at, because I have a very distinct and vivid recollection of what occurred at the very time, and they did not state it as it was. That is, it was an honest mistake, no doubt, but they referred to one thing, when the fact was, it was another.

268 Q. To what testimony or what witnesses do you now refer?

(Objected to as above.)

A. I think Mr. Bingham was one; I have forgotten who the others were. But they stated it, two of them at least, in the way that I have referred to; and it was a mistake on their part. It was not in accordance with what transpired. I can give you that, if you want to know what it was.

Q. Was there ever any resolution of your board of directors to the effect that there should be any modification of the existing contract, other than the resolution approving the making of the contract of February 27, 1885?

A. There was a resolution of the stockholders referred to, and upon that the board took up the subject at a subsequent time, and appointed a committee for the purpose of negotiating, so far as was necessary, a continuation of this present lease, or some modification that might be required.

Q. That committee was given no power to act by the board, of course, or the company?

(Objected to, as above.)

A. I think nothing more than general—that it was a committee.

Q. It was a committee to investigate and negotiate, but not to conclude anything?

(Objected to.)

A. I don't remember the language of the resolution. I would infer, of course not. It was like committees are appointed generally by corporations, and they reported back to the board.

Q. The board of directors kept minutes?

269 A. Oh, yes.

Q. You have seen those minutes from time to time?

A. Yes, sir.

Q. Do you remember of any meeting of the board of directors during the year 1884 or 1885, of which meeting a minute was not made?

A. If there was any business done there was a minute made always. We might have met and had a general discussion probably, and nothing resulting from it.

Q. But there was no meeting of the board of directors during 1884, or the early part of 1885, of which a minute was not made?

A. If there was any business transacted.

Q. If business was done—that is, if any action was arrived at in any way binding the company there was a minute made of it, was there not?

(Objected to.)

A. Certainly.

Q. So that from your knowledge of the manner in which those minutes were kept, you will say that every action of the board of directors which bound the company in any manner concerning the Pullman contract was made a minute of?

(Objected to, as calling for a conclusion of law.)

A. Well, yes, or that transpired in the board. What transpired in the committee was reported verbally, and that was acquiesced in and may not have gone upon the minutes.

Q. But wherever the board arrived at an action it was minuted in the minutes of the board of directors?

270 A. Well, yes, I should say so, except so far as verbal reports that were made from the committee that did not arrive at any definite action.

Q. But where the report had arrived at anything definite there, a minute of the report was made, was there not?

A. I think so.

Q. And certainly where the board arrived at any action, a minute was made of that action?

A. Oh, yes, of course.

Q. So that we may find in the minutes of the board of directors all the actions of the board of directors binding the Central Transportation Company with reference to any change or modification in the Pullman contract?

A. I think so, because it culminated in this agreement of the 27th of February, 1885, finally.

Q. Everything else led up to that by way of negotiation?

A. Yes, and my recollection is that was the agreement at the time that I spoke of when the purpose to cancel the lease was abandoned—it was so agreed, and my recollection is that the same provision was inserted in the modified lease, as I call it, of February 27, 1885. That was, that that lease related back to the expiration of the old contract with the Pennsylvania railroad, and governed from that time. That was the agreement, and I think it was put into the new one.

Q. Was there ever any resolution of your board of directors to this effect, verbally or in substance:

"Resolved, That the Pullman Company, after the expira-

271 tion of the lease with the Pennsylvania Railroad Company, be absolved from liability to pay $264,000 per annum, and be only required thereafter to pay a fair share of such net revenue as may thereafter be earned."

(Objected to, because the records of the company in the possession of the defendants are the only proper evidence of what those records contain.)

A. Of course, I cannot say what was put upon the minutes. My impression is decidedly that after we had come to an arrangement so far as the committee and the board could with the Pullman Company, that there is such a resolution on the record—a report of something.

Mr. Johnson hands minute book to the witness, and asks him if he will be kind enough to turn on the minute book to what he refers to.

A. I find it here. (Examining.)

Q. Please read what you find.

A. I find a report, first, of the Pullman committee. I made this report as the chairman of that committee for the committee.

Q. Please read what you think sustains your statement.

A. I have not yet read it all over.

Q. I desire in fairness to you that you shall read as much of it as you think sustains you.

A. I see that this reports to the board, and then, I suppose, follows the action of the board in the shape of a preamble and resolutions upon that report. The date is the 26th of February, 1885. I am speaking not from a very brilliant recollection of what did transpire in the board.

272 Q. Then please take your time, and examine it fully and satisfactorily before you answer my question.

(After perusing the same, the witness points out on the minutes the matter containing the whole of Exhibit C of the bill and the preceding matter marked between his initials W. S. L. as follows:)

"The Pullman committee, by their chairman, made a report. The committee appointed to negotiate with the Pullman Palace Car Co. in reference to the new contract with the Penna. R. R. Co. with the said Pullman's Palace Car Co., report:

That after many and protracted meetings with the representatives of the Pullman's Palace Car Co., and an examination of the terms and provisions of the proposed new contract between the Pullman's Palace Car Co. and the Penna. Railroad Co., and considering the uncertainties of the length of time said contract may continue, we are of the opinion, and therefore recommend to the board the acceptance of the offer of the Pullman's Palace Car Co., subject to the approval of the stockholders of our company, the terms of which offer, are reduction of rental to the sum of $66,000 per annum, equal to three per cent. on the capital, with the privilege for our stockholders to exchange their stock for the stock of the Pullman's Palace Co., at the rate of four shares of the Central Transportation Co., stock par $50.00 for one share of the Pullman's Palace Car Co.'s stock, par $100.00, this being the best terms or arrangements it is possible for us to make.

"On motion of Mr. McClary, 2nd by Mr. Kisterbock, the report was accepted."

Q. Then, unless such a resolution is to be found in the matter you have pointed to me, there was none?

273 A. I refer to the resolution spread upon the minutes in addition to that, and the verbal reports of the committee, which were acquiesced in from time to time, without going upon the minutes, as it says verbal or written.

Q. Does any verbal report of any modification in any way, shape or form of the contract appear upon the minutes?

A. No, sir; not at all.

Q. Or does there appear upon the minutes any acquiescence by the board of directors in any such verbal report?

A. No; but it was a fact that verbal reports were acquiesced in by the board of directors.

Q. Do you mean that any action was taken, or that nobody said anything in opposition?

A. No; I mean that the matter was reported upon and discussed, and no objection made by anybody.

Q. But the committee had arrived at no conclusion, for they had no right to arrive at a conclusion?

A. No; but so far as we had, it was reported, and it was always acquiesced in.

Q. But the committee never professed to bind the company in any way?

A. Not until we had the meeting that I spoke of when the purpose to withdraw the cancellation, or to desist from the purpose to cancel the lease with the transportation company occurred, and we then and there agreed that we would relinquish the claim to $264,000 a year from the Pullman Company, and take in lieu thereof such reasonable and equitable sum as would be found
274 that we ought to obtain when the contract was concluded with the Pennsylvania Railroad Company. That action was reported verbally.

Q. Did the committee profess to bind the company to any such action?

A. Yes, sir; we had no doubt but what the company would acquiesce in it.

Q. Did the committee, appointed simply to negotiate, pretend with Mr. Pullman that they had power to bind the company in that way?

A. Well, probably we assumed more than we might have done, but we knew the temper and wish of the board—the committee did—and we had no doubt but that our action would be approved; therefore, we assumed to act for the board on that occasion, and it was reported subsequently, and as I say, there was no dissent, but an acquiescence.

Q. Will you tell me why a matter of such importance was not put upon the minutes—a matter of such vital importance—if it had ever taken place?

A. We had not closed our contract yet. We put it all upon the minutes when we came to close it.

Q. You had closed a very important part of it, hadn't you?

A. Well, that we all understood; both sides.

Q. Why, if there had been such a conclusion arrived at, did you not put that conclusion upon the minutes?

(Objected to as immaterial.)

A. I suppose because nobody deemed it necessary. It was so thoroughly understood by both sides that it did not seem to be necessary.

275 Q. Did you not understand that that was a modification of your lease?

(Objected to as calling for an opinion upon a question of law.)

A. Certainly.

Q. Then if you were not professing to bind the company to any modification until the stockholders approved, why did you not——

A. (Interrupting.) Oh, that was always in abeyance. We never assumed to make any modification of the contract without the approval of the stockholders.

Q. Then this modification was simply approved of by the directors subject to the subsequent approval of the stockholders?

A. That was the understanding all the way through.

Q. With Mr. Pullman and with the board?

A. Well, Mr. Pullman was notified that that was the fact, and showed the resolution.

Q. Then this what you call an agreement to a modification to the extent that $264,000 per annum should not be collected, but only a fair and reasonable share, etc., was only approved of by the board of directors conditionally upon their action being approved by the stockholders?

A. Undoubtedly; it was part and parcel of the agreement which we understood had to be approved by the stockholders to make it valid.

Q. And you did not, therefore, enter into any agreement binding upon the company to that effect even until the stockholders approved it?

A. No, we did not intend to, and had no purpose to do so.

276 Q. And did not express any purpose to that effect?

A. No, sir. My opinion was very decided on the subject for one, and I communicated that to the board, by their request, and it was acquiesced in, and acted upon so far as I know.

Q. So that Mr. Pullman knew that when you agreed to that you would have to get your stockholders' approval before it would bind the company?

A. He was notified that that was our position.

Q. What did Mr. Pullman tell you was the net revenue which he would derive from the new contract with the Pennsylvania railroad?

A. He never told us any sum, so far as I know. He never mentioned any sum so far as I have any remembrance, but he laid before us the earnings of the Pullman Company over the Pennsylvania line and connections for several years up to the end of the old contract, and the expenses, etc. We had figures from his auditor from the general books at Chicago, and we had them from Mr. Goodman, a gentleman whom I knew very well, and a very fair man.

Q. He was a brother-in-law of your treasurer, wasn't he?

A. Yes, sir; he was; but he was a very superior man, and a fair man; we had the figures from him. We went over first the earnings. All the books of the Pullman Company were offered to be laid open to us at any and all times that we wanted to examine them ourselves, or by any expert that we might send; but I

277 believe we never did send an expert, because we were satisfied with the statements that we got from the officials of the company that they were correct and honest statements. We acted upon

that basis. We had figures for several years. I do not remember how many, but I think we took the last three years of the operations of the company under the old contract—took the average of the three years. First, we had each year, and then we took the average, I think, of the three years of the gross earnings. Then we took the gross expenses, and then the average in the same way, and that gave us the net under the old contract. We had then the net earnings as represented to us. Then we were familiar with the old contract, and the provisions of the new one. I have explained that before, and I need not repeat it. We arrived at the earnings under the new contract with the Pennsylvania Railroad Company by a supposition that the business would be equal to the last year, or the average of the last three years, and we eliminated then from that, or deducted what we had the figures to show was the mileage allowed and the cleaning, and arrived as nearly as possible at what the net earnings would be.

Q. That gives me an insight into something I wanted to know. What did you calculate was the average net earnings under what Mr. Pullman told you for the last preceding three years?

A. Well, now, the figures I could not pretend to say; but I give you as far as I can recollect the results. I recollect, because that made a very strong impression upon my mind—the amount of mileage and cleaning per year that took the place of the re-
278 pairs, etc. That is, so far as the mileage was concerned. That took the place of the repairs that were first provided for in the contract. It was a surprise to me that the repairs, or that the mileage that was allowed in lieu, would be such a large sum.

Q. And the information that you got which did surprise you was information, which, of course, came from Mr. Pullman?

A. From figures given to us from the books.

Q. And it was upon such figures and such information that you were acting throughout?

A. Undoubtedly.

Q. Please state what Mr. Pullman, or those who were assisting him in the matter, told you was the amount which was allowed him for mileage by the Pennsylvania Railroad Company.

A. I could not say under oath positively; but my belief is, and I am pretty certain that it was three cents a mile for the distance run.

Q. But how much did he tell you was the distance run?

A. I do not remember that; but I recollect the aggregate in substance of the mileage and the cleaning of the cars. Those two items amounted to about $360,000 a year.

Q. Was it not more than that?

A. It was not less than that. I think it was about that. I haven't anything to refresh my memory with, and this is stated only from recollection; but that is my recollection now—that it was in the neighborhood of $360,000.

Q. Did you not at the stockholders' meeting held shortly after the directors approved of a form of modified contract, make this statement—

279 "The contract with the Pennsylvania railroad came to an end last January, the 27th. Up to the end of the contract, the rental of $264,000 a year was regularly and promptly paid by the Pullman Company to this company. Under that contract the Pennsylvania Railroad Company paid for all repairs of the cars, which amounted to $480,000 a year, and paid for the cleaning and oiling of the cars $88,000, and was liable for all accidents. In the contract with the Pennsylvania Railroad Company, all these things are cut out and disallowed except $18,000 a year towards cleaning."

A. I do not remember what I stated. I recollect I made some statement, and whatever statement I made then was in accordance with the information that we had then previously obtained from the Pullman Company.

Q. From Mr. Pullman?

A. From the Pullman Company. (Referring to document just read from by Mr. Johnson.) This does not appear to be my statement at all. I do not remember now what I said at that meeting, except I remember that I made some remarks there. Whatever I said at that time was well considered, and was in accordance with the facts that I had; but whether this is correctly reported I do not know.

Q. What is your best recollection as to the figures, now that your attention is called to that?

A. My impression is now—I have said that I was not positive but that my best recollection was about those two items—I am inclined to think that it was repairs of the cars alone that I had in mind apart from the cleaning. It is stated here, however, that the repairs amounted to $480,000 a year and the cleaning

280 $88,000. I have no recollection what figures I stated at that time, but I can only say this: that whatever I said on that occasion was in accordance with the information that we then had, and which I believed to be correct.

Q. As I understand you never verified, or attempted to verify those statements by an actual examination yourself of the books and papers?

A. No, sir.

Q. You relied upon the truthfulness of the statement as made to you?

A. Yes, sir; as presented to us from the books, and the statements made by the officials of the company.

Q. Can you not give me some idea of what Mr. Pullman told you was the net revenue under the old contract, or the average of three years net revenue under the old contract?

A. We found that; but what we were interested in knowing particularly was, what the net revenue under the new contract would be, and to arrive at that we had to find out what it was under the old. That is true. We took the expenses from that. But I have not any distinct remembrance of those figures, because it was what we were to get that I had my mind upon.

Q. If you cannot give me the others, state what he said to you

would be the net revenue under the new contract, based upon the average of the preceding years.

(Objected to as immaterial.)

A. I do not know that they gave us that at all, but we figured that out for ourselves.

281 Mr. ISHAM: I object to all questions which go into an inquiry as to the earnings of the Pullman Company relative to the amount of the share of rental that should be paid to the Pullman Company, which go to the fixing of the amount of that share, as irrelevant.

The WITNESS: We figured that out from data that we had of the operations under the old contract, and knowing what the terms of the new one were.

By Mr. JOHNSON:

Q. What did you figure it out to be?

A. I have some impression, but hardly enough to swear to, as to dollars and cents. We came to the conclusion from the calculation that we made, and the approximate earnings, for it was all untried yet, and approximate only, in fixing the fair proportion to us we had several things to consider; for instance, the number of cars that it would require to operate the lines that would make this earning. We had 119 cars, and I think there were 190 and some odd sleeping cars that were in use on the Pennsylvania lines.

Q. Was not that, sleeping and parlor cars, both?

A. Maybe it was; I am not sure; it was 190 cars, probably sleeping and parlor cars, both. I am not sure; but I have in my mind that there were 190-odd cars that were in use on the Pennsylvania lines. Well, we had 119, but Mr. Pullman claimed that the cars that he was bound to give us with all the improvements and so on, added, were cars that would not be allowed and had been ruled off of the Pennsylvania railroad, and it was a question as to how many cars we ought to figure on, in reference to the whole equip-
282 ment of the lines. I think the committee came to the conclusion that in fairness we would have about one-half the number, at any rate, of cars we would require to run the lines.

Q. Therefore, that one-half would be a fair percentage?

A. Well, of course, there was risk of accidents, losses, etc., that the Pullman Company was under in the contract with the Pennsylvania railroad that entered into that question. We looked at all points, and tried to arrive at the best thing we could do and could get from the Pullman Company. We looked at all the points and discussed them, and that was an element among others.

Also, the service of the cars, the running and manning of the cars. That we claimed, of course, and it was just and right—was a part of the expenses that would be taken out before there would be net receipts, and we did not take that into account at all, I think, but I think we made some allowance for the cleaning and the risk that the Pullman Company was under, of injury and losses.

Then there was an element of great uncertainty in this new contract, also, that we had to take into consideration—that is, the new contract between the railroad company and the Pullman Company, because by a certain time the railroad reserved the right under the contract entirely, according to my recollection, if they did not end it, to become part owners in the Pullman stock on their lines, etc., all of which would reduce the earnings of the Pullman Company.

283 It was a very intricate thing to get at what would be a fair and just proportion and I do not think that any committee of men ever acted with more persistence and determination to get everything that was possible than the directors of the Central Transportation Company did with the Pullman Company.

We now came down to what we considered—that is, what the committee considered, and the board of directors considered—the valuable thing in the contract with the Pullman Company; which was a right to exchange stocks. We came first to what would be a fair division, as we could get at it, if we went on, of the net earnings, and we fixed that at $66,000 a year, which was something less than one-half, I think, but probably not a great deal less than what we estimated the one-half of the net earnings.

Q. And that estimate was made upon data furnished you exclusively by Mr. Pullman?

A. Yes, sir, and what we knew about the uncertainties of this contract. It was approximate.

Q. Until that contract which the board of directors approved of had been agreed upon conditionally between the board of directors and Mr. Pullman, had your minds ever come together upon what would be the basis of a fair division of net revenue?

A. No, not until we finally agreed, though we had discussed many things and many sums, and the exchange of stock, and so on.

Q. You spoke of a written notice that Mr. Pullman gave.

A. A written communication by letter through the mail.

Q. What became of that?

284 A. I have no doubt it is on the files. It ought to be. I have never seen it since it was read before the board. It was in the hands of the secretary.

Q. Do you remember how long before this modified agreement was approved of in February, 1885?

A. It was some considerable time before that. It was some time before the expiration of the contract with the Pennsylvania Railroad Company, which was the 27th of January. It was probably a month or more before that.

Q. Is it the one you refer to on page 16 of your affidavit in which you say: "At length, and some time late in the summer or in the fall of 1883, and under those circumstances, Mr. Pullman, president, and other officers of the Pullman Company, announced to us that the Pullman Company was going to exercise, etc., etc."?

A. No, that is not what I referred to. He had announced it, as I say in my testimony here, many times. He had stated to us many times that he feared that would be what would have to be

done; but what I referred to when I referred to a written communication was at a subsequent time. It was some time—how long I could not say, but a month or more, I should say, before the expiration of the old contract with the Pennsylvania railroad.

Q. A written communication?

A. Yes, sir, it was a written communication from the Pullman Company—from Mr. Pullman, signed as president, according to my recollection, and sent through the mail to the transportation company.

Q. Repeat again, if you can, the substance of that communication?

285 A. The substance of it was that in view of the difficulties and the improbability, or impossibility, probably it was, of making a contract with the Pennsylvania Railroad Company, after the expiration of the old one, which would enable Mr. Pullman to operate the lines of that road and pay any rental to the transportation company, the Pullman Company had come to the conclusion and determination to cancel or annul—I do not know what word, but to that effect—the lease between them and the Central Transportation Company. It was a notice to that effect—a general notice—and that details could be subsequently arranged.

Q. You made a speech of some length to the stockholders when they met to consider this modified lease, did you not?

A. I think it was a very short speech. I stated some facts.

Q. Did you mention to them that you had received any such communication from Mr. Pullman, or that any agreement had been made on the basis of it?

A. I do not know. I have no recollection of what I said then.

Q. Can you name any person to whom you ever mentioned the fact that Mr. Pullman had sent such a communication and that the committee had undertaken to act on the basis of it? If so, please state the names of all the people to whom you mentioned that fact?

A. I do not think I ever mentioned it to a living soul. There was no occasion.

Q. Why not?

286 A. It was to the board of directors, and they all understood it and knew it.

Q. I see that the only meetings of the board of directors of this company noted as taking place in 1885 were as follows: 19th January, 1885, no quorum; 26th January, 1885; 26th February, 1885; 27th February, 1885. At which of those meetings do you think it was that the committee communicated to the board what had taken place between Mr. Pullman and themselves on this subject?

A. At the first meeting the committee reported to the board. That was the 25th, I think—the 26th of February. The committee reported all that had been done, and that was the time that we made a written report, and, therefore, it went on the minutes.

Q. Do you think that is the time at which the committee reported to the board what had taken place between themselves and Mr. Pullman with reference to this alleged notice?

A. Oh, no.

Q. The other meetings in 1885 that I have given you——

A. (Interrupting.) That was a verbal report, as I have before said.

Q. I am getting at the time of the meetings at which that was communicated. The preceding meeting to the 26th of February, is the 26th of January, 1885. The only other meeting in 1885 was the 19th of January, when there was no quorum. Do you think it was, therefore, at the meeting of the 26th of January, 1885, that the committee stated to the board, who made no dissent, what
287 they had done with Mr. Pullman with reference to this modification?

A. No, it must have been earlier than that.

Q. But a moment ago you said that the communication was received a month before?

A. About a month, probably, or more.

Q. The next preceding meeting is the 18th of December, 1884?

A. Probably that was it.

Q. There was no meeting of the board antecedently to that, except on the 26th of September, 1884. At which meeting do you think it was that the committee communicated this matter to the board, who did not dissent?

A. We had so many meetings that it is very difficult for me to fix a time; but my general recollection is that the time when Mr. Pullman agreed to abandon his purpose of annulling the lease, and we agreed to abandon the $264,000 and take, as I have stated before, what would be fair and equitable was, I should say, a month or two, or something like that before the expiration of the old contract; but as I say, we had so frequent meetings that it is difficult for me to fix the date when it happened.

Q. But you have said that wherever the meeting resulted in any action being taken, it was noted?

A. Yes, sir, it was reported to the next meeting of the board.

Q. I have now stated all the meetings, and I wanted to ascertain, if I could, your own recollections as to which of those meetings it was at which the committee made that statement?

288 A. I could not, except that it would be at the first meeting of the board after the matter occurred.

Q. You are sure that it was in 1885 that this alleged communication was received?

A. No; it was in 1885 that the lease expired. I think it was earlier than that that the communication in writing was received. And it was subsequent to the communication in writing that we had the meeting and agreed upon the modification of the amount, but without fixing any new sum. That was for the future.

Q. Was not what Mr. Pullman was driving at in the whole of these negotiations with the board of directors to get them definitely to fix the amount which they would recommend to the stockholders should be the future rental?

A. That was part of the discussion that we had from time to time. It was not the whole matter at all, but it was a part of it.

Q. I see that on the 18th of December, 1884, at a meeting of the board of directors the following occurred:

"The Pullman committee, by their chairman, W. S. Lane, made a report verbally. It was stated that after frequent interviews had with George M. Pullman, president of the Pullman's Palace Car Company, in which all the various changes and modifications of a new contract between the Pennsylvania Railroad Company and his company to take the place of their present contract expiring January 27th, 1885, had been canvassed, they ascertained that the terms were so close that it was a question whether he would be able to make it without the concessions on rental on our part were
289 such that his company would be enabled to make any money out of it. He, however, made a proposition that if our company would reduce the rental to four per cent. or $88,000 per annum, he would possibly be able to make a new contract with the Pennsylvania Railroad Company. Some of the items of the new contract were: first, the mileage or repairs to cars would not hereafter be paid by the railroad company, amounting to $415,000; second, a clause that the contract could be terminated in five years, at which time the railroad company would have the right to take certain of the cars now designated at an appraisement of their then value; third, the cleaning of cars was to be paid by the Pullman Palace Car Company, amounting to about $84,000, thus leaving the expenses to the railroad company, simply the motive power and track, or nearly so. These terms were so close, leaving so little money margin for profit that his company could not make a rental to us more than his offer. After due consideration being given to this report, the following was offered by Mr. Wright, and seconded by Mr. McClary, Jr.:

"Resolved, That it is the opinion of this board that it is prudent to agree with the Pullman Palace Car Company on some reduction of the rental in order to assist that company in the renewal of a contract with the Pennsylvania Railroad Company, and, also, prevent liquidation of this company in case of a non-renewal.

"Further resolved, That this board will accept a reduction of the rental payable by the Pullman Palace Car Company under lease dated February 17th, 1870, and will agree to reduce the same to $110,000 in lieu of the present sum, $264,000, to be paid to this company during the term of any contracts made between the Pullman Palace Car Company and the Pennsylvania Railroad Company, and will recommend the acceptance of this reduction by our stockholders as soon as the Pullman Palace Car Company agree thereto."

"The ayes and nays being called for on the above resolu-
290 tion, the following was the result: Ayes, W. L. Lane, S. McClary, Jr., John A. Wright, J. C. Bingham; nays, Evan Morris. The resolutions were, therefore, adopted."

Q. That was on the 18th of December, 1884. Was it before that time, or subsequently to that time, that this alleged notice or communication from Mr. Pullman was received?

A. It was subsequent to that.

Q. Then up to that time you had received no communication from him to such effect as you have stated?

A. Only verbally. He mentioned from time to time that it might be necessary to end it. He did not know certainly.

Q. And it was subsequently to that that the committee said to him what you have said, and that the directors acquiesced in what the committee said they had said?

A. Oh, yes.

Q. The next meeting after that was the 19th of January, 1885, and there was no quorum. It could not have been at that meeting.

A. No, sir.

Q. The next meeting was the 26th of January, 1885, and there was no subsequent meeting until the 26th of February, 1885. Then may we take it that it must have been, and was, at the meeting of the 26th of January, 1885, that the committee communicated what you have said to the directors?

A. I think very likely. And I think very likely that in that report and action taken there you will find the substance of that too.

Q. I find that the action there taken was this:

291 "Considerable conversation on the subject of the terms decided by the board at a previous meeting to which they would be willing to reduce the rental under the lease to the Pullman Palace Car Company took place, and the opinion was unanimous to adhere to the sum of $110,000."

Q. Do you still think it was at that meeting that the communication was made by the committee?

A. I say I do not know. It is possible, but I do not know. I am not sure.

Q. The next meeting was the 26th of February, 1885, and at that meeting the Pullman committee by their chairman, being yourself, made a report.

"The committee appointed to negotiate with the Pullman Palace Car Company in reference to the new contract of the Pennsylvania Railroad Company with the said Pullman Palace Car Company report:

"That after many and protracted meetings with the representatives of the Pullman Palace Car Company and an examination of the terms and provisions of the proposed new contract between the Pullman Palace Car Company and the Pennsylvania Railroad Company, and considering the uncertainties of the length of time said contract may continue, we are of the opinion, and, therefore, recommend to the board the acceptance of the offer of the Pullman Palace Car Company subject to the approval of the stockholders of our company, the terms of which offer are a reduction of rental to the sum of $66,000 per annum equal to three per cent. on the capital with the privilege for our stockholders to exchange their stock for the stock of the Pullman Palace Car Company, this being the best terms of arrangement it is possible for us to make. On motion of Mr. McClary, seconded by Mr. Kisterbock, the report was accepted."

Q. Do you think it was at that meeting the committee
292 reported the communication which had been received from Mr. Pullman, and its actions or doings thereon?

A. In reference to the agreement to reduce, do you mean? I should say that it must have been before that.

Q. The meeting of January 26th, where they speak of the long conversation?

A. Yes, sir; I should say that it was.

Q. Excepting so far as you were told by Mr. Pullman, had you any positive knowledge that the net revenues of the Pullman Palace Car Company derivable under the new lease with the Pennsylvania Railroad Company would fall below $264,000 per annum?

A. Only from the data furnished by the officials of the Pullman Company. I do not think Mr. Pullman himself personally said anything about it, but his officials did. He was there, and they furnished the data that we acted upon. It was only from information that we received from the officials of the Pullman Company.

Q. Did you ever take any steps to inform yourself of the extent to which Mr. Pullman had kept his contract to keep up your cars, and where he had not kept them up had actually substituted other cars for them?

A. Yes, sir.

Q. State what you ascertained with regard to that.

(Objected to as not the subject-matter of cross-examination.)

293 A. In a general way, I had knowledge of it, though I never was assigned to any special duty in that direction. I had knowledge of it from the reports made by the secretary and others to the board from time to time, and from what some of the Pullman officials stated. There was a part of the cars that they, as we understood, had not kept up at all that were stored at Altoona, I think it was.

Q. Did you make any inquiries about the fund which had been received by him for cars of the Central Transportation Company which had been destroyed?

A. Yes, sir.

Q. Did he tell you what that fund amounted to?

A. Yes, sir.

Q. How much?

A. I do not remember. It was reported to us.

Q. Have you no recollection at all of that amount?

A. It was not merely the cars destroyed, but cars that he sold. He sold some cars as well as those destroyed. It amounted to a considerable sum, but what sum I do not remember.

Redirect examination by Mr. ISHAM:

Q. In that ultimate agreement which was made, dated the 27th of February, 1885, there is a provision about the exchange of the Central Transportation Company's stock for the Pullman's stock, the amount of compensation to be paid to the Central Transporta-

tion Company, by the Pullman Company being coupled with the right to exchange the stock. Please explain why that provision was introduced, and how it came about?

294 A. That provision was introduced at the instance of the committee and the board of directors of the transportation company, and that right or option obtained from the Pullman Company by the transportation company. It was at our instance. I thought individually, and I am quite certain that all the board were of the same opinion, that that was a good provision, and much better than to rely upon $66,000 under the modified lease.

Q. Had it any relation to the provisions of the Pennsylvania Railroad contract by which they had a right to annul that railroad contract, or to take an interest in it?

(Objected to as entirely too leading.)

A. The right to exchange the stock entered into all the questions of uncertainty to the transportation company. If the Pennsylvania Railroad Company exercised their option to annul the contract altogether as they could in five years, I think or become the owner, and then again, they had another option to become part owners with the Pullman Company, all of which would reduce the earnings and make it necessary for a new deal between the Pullman Company and the transportation company—in avoidance of all those questions, I thought that the right to exchange stock that was put into that modified lease was a very valuable one.

Ours was an uncertain thing. Pullman's was a live and prosperous and rich company, and while it was four shares for one as it is set out in the agreement, it was, in fact, in dollars, two for one, because the par of ours was $50 and the par of Pullman's was $100.

295 Q. You were asked by Mr. Johnson concerning some statements which you said were made by Mr. Bingham in the testimony on the former trial which you thought he was examined about. Please tell us what the statements of Mr. Bingham were in which you think he was wrong.

A. He was being examined, and the other witness, whom I cannot recall now, though I heard two who testified in the same way. They were being examined as to what occurred at the Continental hotel on the morning when the modified lease between the transportation company and the Pullman Company was executed by the officers there.

Q. Do you mean the instrument of February 27, 1885?

A. Yes, sir. I was present there and heard all that occurred, and was particularly wide awake to know what did occur, and recollected it perfectly. Mr. Pullman was there; Mr. John C. Bullitt was there; Mr. Atterbury, Mr. Bingham, Mr. Cottinger and others—quite a number. Mr. Bingham testified, and another witness whom I cannot yet recall, though I know that there were two—that in the interview at that time when the contract was executed by the president and secretary of the Central Transportation Company, Mr. Pullman said that he would take the chances of the stockholders

approving of the contract. That was a mistake. What was said was this. The contract had been prepared first by myself and Mr. Atterbury, I think—this modified lease of the 27th of February, 1885, and subsequent to the report which I made to the board in which I recited the resolution of the stockholders, and I was under
296 the impression that the same resolution was recited in that agreement—that is, set out expressly in the agreement to be signed as it was in the report which I made, and that the board acted upon. I was requested specially by the president, Mr. Bingham, when we adjourned the evening before, to meet them at the Continental hotel the next morning in time to have the matter executed, as Mr. Pullman had to say yes or no before the meeting of the board of directors of the Pennsylvania railroad on that day whether he would close a contract or not. That was their last meeting before their annual meeting. That is what he said, and I believe it was so. Accordingly, by request of the president, I went to the Continental hotel. It had been written off on the typewriter in duplicate or triplicate, probably—duplicate, at least—this modified agreement or lease. I took it up, and hastily ran over it; but I did not see the provision that I wanted in it—that is, the substance of the resolution of the stockholders, which I had put in the report, and the directors adopted it. I said to Mr. Atterbury "That provision is omitted; it is not here, and must go in." He looked at it. "Well," he said, "it was not in, he guessed, but it was too late now, and they couldn't wait, and it was of no consequence, anyhow. It was either good or not," or something to that effect. I insisted upon it that it should go in. Mr. Pullman objected. He said that if that went in, and he presented that contract as he had to do to the Pennsylvania Railroad Company, it was all in abeyance yet and to be determined in the future, and it would defeat the whole
297 purpose, and that he could not take it. I turned to Mr. Bullitt, and I said, "Mr. Bullitt, what do you say as a lawyer?" I had expressed my opinion before, that it was essential that it should go in to make a valid contract, and that I wanted it in to avoid any trouble or litigation growing out of the omission to put it in the contract. I says, "Mr. Bullitt, what do you say, as a lawyer, would be the effect upon this modified lease if the stockholders refuse to approve it?" Well, he hesitated a second, and he said, "In that case I should say it would fall." Then he said, "However, it is a question of power in the board of directors." Mr. Pullman turned around, and he said, very decidedly and very brusquely, as I thought, "Gentlemen, I am otherwise advised. It is a valid contract independent of any approval of the stockholders, and of that I will take the chances;" that is, that it is a valid contract as it is. Not that he would take the chances of the stockholders approving of it. There was a mistake that the witness made.

Q. Your recollection is very clear on that subject?

A. I have a distinct recollection, because I was wide awake at the time to know just exactly what was done, and I was determined to have that put in if possible, and I never withdrew my objection

either, although Bingham told me afterwards that he understood I had; but I did not. I did not tell him to sign it.

Q. Did Mr. Pullman modify his position on that subject?

A. No, sir; he never did, so far as I know.

298 Q. It was at that time that Mr. Pullman was notified that you claimed that this contract was all subject to that?

A. Oh, no, it was before that. He knew of it all along.

Q. Turning to that contract of February 27, 1885, supposing that contract not to be ratified by the stockholders, what was your understanding, having in view your agreement with Mr. Pullman, as to the effect—that it would thereby throw him back upon an obligation to pay the old rental of $264,000 a year, or to a right of the company to readjust and settle the share of the net earnings which should be paid to the transportation company?

(Objected to as irrelevant.)

A. I never imagined for a moment, and so far as I know of no other officer or director of the company imagined for a moment that if that modified lease was not ratified by the stockholders it threw us back to $264,000. That was at an end; but that it would throw us back to one of two things—either the option of the Pullman Company to still terminate the lease and surrender the demised property, or to ascertain by agreement, or by a legal or equitable proceeding, what would be a proper and fair proportion to the Central under the new lease—under the new contract with the railroad company. I never had any other opinion or idea, and I haven't now.

Q. That was your construction of the agreement you had made with Mr. Pullman, and its effect?

(Objected to as leading.)

A. Yes, sir.

299 Recross-examination by Mr. JOHNSON:

Q. That was your construction of the original agreement—that at the end of the term the $264,000 had expired?

A. Yes, undoubtedly.

Q. And that, therefore, when it was reduced below $264,000 it was no longer binding, and your construction, therefore, was that if the company and Mr. Pullman could not agree upon this proposed modification and any other, that he had then the right to cancel his lease?

A. Yes, sir; certainly.

Q. You thought, I understand, that this privilege of converting Central Transportation into Pullman stock was a valuable one?

A. Yes, sir, I did.

Q. And I may take it, therefore, you converted your stock into Pullman?

A. I did, and I made a good thing by it.

By Mr. ISHAM: Do you hold the Pullman stock yet?
A. I do.

WM. S. LANE.

Sworn and subscribed to before me,

SAMUEL BELL,
Special Examiner.

Adjourned to 3.15 p. m., Thursday, November 3, 1887.

300 FRIDAY, *November* 4, 1887—3.15 p. m.

Present, Mr. Isham for complainants; and John G. Johnson, Esq., for defendants.

JOHN A. WRIGHT, having been duly sworn, was examined as follows:

By Mr. ISHAM: What has been your business for some time?
A. For a number of years I have had no special business.
Q. Do you know the parties to this suit, The Pullman Palace Car Company and The Central Transportation Company?
A. Yes, sir.
Q. During the years 1883 and 1884, and up to the spring of 1885, you were a director in the Central Transportation Company, were you not?
A. I think those were the years.
Q. Did you take an active part in the management of the affairs of that company?
A. I did.
Q. How much so?
A. I was one of the committee that was appointed to make the contract with the Pullman Company.
Q. You were familiar with the contract of lease between the Central Transportation Company, and the Pullman Company, and with the then current railroad contract between the Pullman Company and the Pennsylvania Railroad Company, which expired on the 27th of January, 1885?
A. I was.
301 Q. Before the expiration of that contract had the Central Transportation Company taken any action with reference to the relations of the parties when that contract should expire by appointing a committee or otherwise for that purpose?
A. Yes, sir.
Q. What had the Central Transportation Company done?
A. My recollection is that the stockholders had passed a resolution of instruction to them in regard to it, and that they took it up for consideration.
Q. Do you refer to the stockholders' resolution of April 18, 1884?
A. Yes, sir.
Q. Was there also a committee of the board of directors appointed for that same purpose?
A. Yes, sir.
Q. Do you remember when that was?

A. I do not remember the date.

Q. It is of that committee that I understand you to say you were a member?

A. Yes, sir.

Q. What information had the directors and officers of the Central Transportation Company with reference to the probability of renewal of the then existing Pennsylvania Railroad contract?

A. It was understood that Mr. Pullman would not be able to get the same terms or as good terms as he had gotten in the contract that was just expiring.

Q. Do you know whether you received any information to the effect that it was possible that he might not be able to make any railroad contract at all with the Pennsylvania railroad?

302 A. Yes, sir.

Q. State what you know upon that subject.

A. It was stated, I think, by Mr. Pullman, that it was not certain whether he would be able to make the contract at all.

Q. As time progressed and the time for the expiration of the existing railroad contract approached, what information did the Central Transportation Company have upon that subject? What was their understanding?

A. They understood that Mr. Pullman was endeavoring to make a contract which, from time to time, he reported as being very uncertain as to what it would be, or whether he would be able to make a contract.

Q. You knew that he was having difficulty in making any satisfactory contract with them?

A. It was so reported to us.

Q. What did you understand as to the character of the contract that he would be able to make, if any, as to its earning capacity compared with the one about expiring?

(Objected to as irrelevant.)

A. Well, that it would be much less.

Q. What was your information on that subject?

(Objected to.)

A. That it would be very much less on account of loss of use of the same number of cars.

Q. State whether any communication was had from Mr. Pullman as to the probable action of the Pullman Company in reference to that subject in relation with the Central Transportation Company.

303 A. I do not remember any special conversation. There was always the general conversation. When we met, the points were all gone over.

Q. State the substance of what transpired.

A. It was a question whether he would annul the contract, or whether he would make a new one with the Central Transportation Company, depending on his ability to make a contract that would pay with the Pennsylvania Railroad Company.

Q. Did the Central Transportation Company have negotiations with the officers of the Pullman Company on that subject?

A. Yes, sir; repeated.

Q. State generally what those negotiations were, and what they resulted in.

A. I took the negotiations at the time to be somewhat conditional. Mr. Pullman was negotiating with the Pennsylvania Railroad Company from day to day, and the conditions were being altered somewhat, and then it narrowed down to the point where he thought he could make such and such terms. Then he desired to make a contract with the Central Transportation Company based on those terms.

Q. A contract upon what subject—for future rental?

A. For a particular rental under his option, which he had in the contract, either to annul or to have a new contract.

Q. What contract do you refer to as continuing his option? You refer, I suppose, to the lease between the Pullman Company and the Central Transportation Company.

A. Yes, of course.

304 Q. Do you refer to the provisions in section 8th, as it was known?

(Objected to as leading.)

A. I think that is the section. I did not charge my mind with any of these details at all, and they have passed by me in these years. I have not thought anything of them, only as they come up to me. I do not know that I can say anything further on that subject.

Q. In view of the character of the new contract that he was likely to be able to make with the Pennsylvania Railroad Company, was any position taken by the Pullman Company with reference to the continuance of the old fixed rental under the lease of $264,000 a year? If so, state what it was.

(Objected to as irrelevant and leading.)

A. No; that was considered by all of us at an end with the contract. The question was to make a new contract with a fair proportion of earnings. The question was to arrive at what would be a fair proportion of the earnings under the new contract.

Q. Do you refer to a fair proportion of the earnings that should be made under a new railroad contract that he might be able to make with the Pennsylvania Railroad Company?

(Objected to as leading.)

A. Yes, that would be the basis.

Q. How early did the Central Transportation Company and the Pullman Company, in their negotiations, come to an understanding on that subject—that after the expiration of the Pennsylvania Railroad contract the fixed rental of $264,000 should be at an

305 end, and the future rental should be based on the net earnings under the new contract that should be made; was it

before the expiration of the Pennsylvania Railroad contract then current?

(Objected to as irrelevant and leading.)

A. I think that was right at the commencement. It was understood that he could not get as desirable a contract; that was the general understanding; of course, the amount of the old contract at once fell out.

Q. This was early in the negotiations with the Pullman Company in view of the approaching expiration of the Pennsylvania contract?

(Objected to as leading.)

A. Yes; I think that was the basis from the first; that is my recollection of it.

Q. Did the directors of the Central Transportation Company, after that time, continue to negotiate with the Pullman Company with reference to what proportion of the net earnings should go to the Central Transportation Company?

(Objected to as leading. The question should be, what did they negotiate about.)

A. Yes; that was the whole subject of the conferences; that was the point.

Q. State what negotiations transpired between the parties on that subject as well as you can recollect it in substance.

A. All I could say of that is, that we had a great many meetings, and these questions were talked of continuously and in every shape and point of view until at last we arrived at the conclusion fixing the rent, as being, under our judgment, as fair as we could
306 determine it; not as much as we would have liked to have had, but as fair as we could agree upon.

Q. Do you refer to the rental that was afterwards fixed in the contract connected with this bill—that was specified in the contract known as the modified lease made on the 27th of February, 1885?

A. Yes, sir; sixty-odd thousand dollars.

Yes, $66,000 and the right of exchange of Pullman stock.

Q. How did you come to get upon the idea of adopting a share of the earnings under that contract as the basis of future payment to the Central Transportation Company?

(Objected to as irrelevant and leading.)

A. My impression is that that is in the 8th section of the contract.

Q. Then in proceeding to adjust the rental upon that basis the parties were proceeding, were they, under the provisions, as they understood, of the 8th section of the original lease?

(Objected to as irrelevant and leading.)

A. It was under the provisions of the lease.

Q. I call your attention to "Exhibit A," to the bill of complaint here, which is the old lease between the Central Transportation Company and the Pullman Company, and to section 8 thereof.

Please look at it, and state whether that is the section which you have in mind?

A. Yes, that is it—"such sum or share of the net revenues from the remaining lines of road as the parties hereto may at any time agree upon."

307 Q. Then, I understand you that the subject-matter of all the negotiations between the Central Transportation Company and the Pullman Company, after the expiration of that Pennsylvania Railroad contract, related to the share of earnings which should be paid to the Central Transportation Company under the provisions of that lease; that is, the amount of that share?

A. Yes, that was the only point we had before us.

Q. Do you remember what had been said before the expiration of the Pennsylvania Railroad contract by the Pullman Company with reference to their purpose to annul the lease in view of their difficulty in getting any new contract with the Pennsylvania Railroad Company?

(Objected to as irrelevant and leading, and also because the witness has testified to no such facts as are included in the question.)

A. No, any more than it was so considered—so talked about as a matter of course—that they had the right to do it; and if they could not make a contract, they would have to do it.

Q. State whether, or not, it was in lieu of such an annulment of the contract discussed, as you have said, that it was decided to continue the contract under those provisions of the 8th section for payment of a share of the net earnings instead of the old fixed rental of $264,000. State what you know upon that subject.

(Objected to as irrelevant and leading, and as containing a suggestion of fact which is not to be found in the previous testimony of the witness.)

308 Q. The question is, state whether that arrangement was come to in lieu of the other matter that was discussed.

(Objected to as above.)

A. I can hardly say whether it was or was not directly in that way. It was the result of all our talking that at last they got a contract; that is, the Pullman Company got a contract with the Pennsylvania Railroad Company that they were willing to accept. Then the question was whether we could agree to a certain rental that they could accept it.

Q. But I understand you to say that it had been determined that that result was to be a share of the earnings that could be made under that contract with the Pennsylvania Railroad Company?

(Objected to as leading.)

A. Yes, sir.

Q. State as fully as you can what the course of the negotiations of the parties was, and the result to which they came?

A. Each party understood their own position, and they met, and

met a great many times, and talked the matter over a great many times, in a great many ways, all depending and hanging upon the character of the contract that could be made with the Pennsylvania Railroad Company, until at last, after innumerable conferences, the conclusion was arrived at which was embodied in the form of the new contract. That is the sum of it.

Q. What disposition was made of the old rental of $264,000 that had been reserved in the lease?

A. That was considered at an end. All these figures were in lieu of that—that they could not earn that; and they could earn the other.

309 Q. Then the result was that the Pullman Company should pay a share of what they could earn under any new contract, in lieu of that old rental?

(Objected to as leading.)

A. That was the object of all our conversation.

Cross-examination by Mr. JOHNSON:

Q. You remember, of course, the resolution of the stockholders at their meeting in April, 1884, reading thus:

"Resolved, That the board of directors be and they are hereby authorized to make a modification of the existing lease with the Pullman Palace Car Company, if, in their judgment, modifications or changes may be deemed necessary, and to submit their action in that behalf to their stockholders for their approval."

A. I presume that is the resolution. I knew that there was one.

Q. You had that resolution in your mind during all the course of your negotiations with the Pullman Company?

A. Of course. That was what we acted under.

Q. And the existence of such a resolution by the stockholders was the subject of talk between themselves and the Pullman representatives, of course?

A. Yes, that was the only authority we had.

Q. You, of course, never undertook, with Mr. Pullman, to make any modification of the existing lease, excepting subject to the condition that the stockholders should approve?

A. No, sir.

310 Q. So far as you have any knowledge on that subject, all the negotiations by your board and all the agreements by your board with the Pullman Company, were made subject to the approval of the stockholders?

A. Yes, sir.

Q. And not to be binding, if they did not approve?

A. No.

Q. Then, may I take it that it was the understanding between Mr. Pullman and your company that if whatever the directors would agree to should not be approved by the stockholders, he (Mr. Pullman) was to be at liberty to annul the agreement with the Central Transportation Company?

(Objected to.)

A. The parties, then, I suppose, and I only speak for myself, in case of the refusal of the stockholders to approve the contract, were put back into their original position—what it was before the contract was made—unless Mr. Pullman, having elected to make a contract, should involve the making of another contract, if it could be made.

Q. Therefore, if the stockholders failed to approve, it was understood that what the directors agreed to did not bind the company, and Mr. Pullman was to be relegated to his original rights?

A. Yes, sir; both parties to their original rights.

Q. And he was to be at liberty to annul the agreement just as he stood before the expiration of the Pennsylvania contract?

A. He could annul, or he could ask for a new contract if he was not already bound by his having asked for a contract in place of annulling.

311 Q. You interpreted the old agreement to give Mr. Pullman the option either to annul the original contract, or to go on and pay a fair share of the rental?

A. Yes, sir; make a new contract.

Q. You understood, as you interpreted the old contract, that that was his right under that old contract?

A. Yes, sir.

Q. And therefore, if the stockholders did not ratify what the directors were willing to do, that he was at liberty either to annul the old contract or to have determined in any way that the law would determine it, what should be the rental to be paid in the future?

A. Yes, sir; I think that was my idea.

Q. Your understanding was, that as soon as the rentals fell below $264,000 by the terms of the old contract, he ceased to be bound to pay the $264,000?

A. Yes, sir; that is, by the giving up of any roads. That he could at any time have come in and asked for a change of terms.

Q. That was your understanding, and I take it you never entered into any agreement about that subject, because you so understood his rights to be under the old contract?

A. Well, no. More than that. That contract—by just reading it over, has refreshed my memory, and it gave him the right to give up at any time during the existence of that contract; but when that contract came to an end with the railroad company, then the claim to the $264,000 ceased.

312 Q. So that in your answers to Judge Isham, the idea you meant to convey, was that it was your interpretation of the agreement that when, by the giving up of the contract, the revenue had fallen below $264,000, he was no longer bound to pay it?

A. Yes, sir; as I have explained it.

Q. Now, as I take it, the board of directors never entered into any agreement with Mr. Pullman, except the one which was submitted to the stockholders, did they?

A. Not that I know of.

Q. You never heard of any resolution or agreement by your board of directors modifying the old lease in any particular, excepting the agreement that was arrived at and conditionally executed and subsequently submitted to the stockholders?

A. That is the only one I know of.

Q. And when that agreement was resolved upon it was understood between yourselves and the Pullman Company, was it not, that it should only bind the company if the stockholders approved?

A. Yes, sir.

Q. You had no evidence furnished you at any time that the revenues would fall below $264,000, excepting what was stated by Mr. Pullman and his representatives?

A. That, and the falling off of parts of the original contract that they had lost.

Q. Do you remember any statements by Mr. Pullman as to what his revenue was under the old contract?

A. No, I do not. I did not charge my mind with that.

313 Q. Then how did you get at the sum from which you deducted the estimated falling off in order to get what would remain?

(Objected to as not any matter of direct examination.)

A. I could not give you the details at all because I did not charge my mind with it, at all. I only worked at it myself as well as I could to come to an impression.

Q. The board of directors did not examine any of the original books of Mr. Pullman at any time, did they?

A. I did not. I do not know whether any others did or not.

Q. You never heard of any notice by Mr. Pullman annulling the old contract, did you?

A. No, no notice. I do not think that we had. He talked about it, that he might have to do it.

Q. And he told you, I take it for granted, that if he could not ultimately agree with the company through an agreement approved by the directors and ratified by the stockholders, that he would be obliged to annul it?

A. No, I do not think he ever said that. The only ground on which he put the liability to annul the contract was his inability to make a satisfactory contract with the Pennsylvania Railroad Company.

Q. Do you remember Mr. Pullman or his representatives giving you any statement of what his probable revenue would be under the new contract with the Pennsylvania Railroad Company?

(Objected to.)

314 A. I do not remember any of the figures at all in regard to it. Those things passed out of my mind entirely, and I have not thought of them since.

Q. Do you remember when you parted with your shares of stock in the Central Transportation Company?

A. I do not.

Q. It was some time before the end of 1884, was it not?

A. I parted with some, and then I was urged by members of the board to hold enough interest so as to help them in this contract.

Q. That is, you retained the legal title to the shares, but you had parted with the real title?

A. No, I do not remember now how it was; but I had a legal right to be a director, and only remained at the request of members of the board to help them.

Q. It was some time during 1884 that you made the sale of your interest?

A. I suppose so. I do not know the date.

Q. Do you remember who purchased the shares?

A. I do not.

Q. How many shares had you?

A. I do not remember.

Q. The legal title to all your shares was transferred before the end of 1884. Do you know how that was, if there was any reserved?

A. The secretary of the company, I understood, made me a legal holder, transferred to me other shares.

315 Q. That is, he put some qualification shares in your name?

A. Yes, sir.

Redirect examination by Mr. ISHAM:

Q. I now refer you to the provisions of section 8 of the lease, which I ask you to read. Mr. Johnson in his interrogatories asked you whether you understood that the expiration of the Pennsylvania contract of itself alone ended the rental of $264,000. Do you mean to be understood that, or do you mean to be understood as saying that, in case the earnings fell below $264,000, as provided in that section, Mr. Pullman was to have the right to the option that was given by that section?

A. Of course, there is the option that he may annul the lease. He had the option, I take it, to either annul the lease or to make a new contract. That is, to determine a new sum that should be a fair equivalent for the revenues.

Q. Or to go on under the lease under those last provisions and pay a share of the net revenue?

(Objected to as leading.)

A. Yes, sir.

Q. Then, if it was Mr. Pullman's right to determine that he would go on and pay a share of the net revenue in place of the old rental that had been reserved in the lease, that was the thing in which the directors of the Central Transportation Company concurred with him, was it not, at that time?

(Objected to as leading.)

A. Yes, sir; I think so.

316 Q. If that was his right then, do you mean to be understood as saying that the question of paying a share of the net revenues instead of the $264,000, was a matter that was reserved for the stockholders to pass upon, or that the subsequent contract which was made which fixed the share, and the amount of that share of net revenue to be paid, was a matter that was reserved for the stockholders?

A. I suppose that that modification was really the point for the stockholders to act on, and that was the point that they objected to.

Q. It had been understood that $66,000 was a proper share of the net earnings under the new contract, to be paid to the Central Transportation Company?

A. That was the conclusion that we arrived at—that the directors arrived at.

Q. In case that $66,000—that share so ascertained of the net revenue, should be rejected by the stockholders, was it the understanding in your mind that that rejection thereby revived the obligation to pay the old rental of $264,000, or simply an obligation to readjust what their share of the rental should be?

(Objected to.)

A. Certainly, as a matter of equity and justice, it was thought each party had their rights afterwards. Because, otherwise we might have caught Mr. Pullman. Otherwise, we might have been charged with getting the advantage of Mr. Pullman by agreeing to a rent that we knew the stockholders would not approve of
317 and, therefore, he would be bound for the whole amount. That would have been a catch.

Q. Do you mean to be understood, that if the $66,000 was rejected by the stockholders, that that thereby revived the old rental of $264,000 for Mr. Pullman to pay?

(Objected to.)

A. No, sir, not at all.

Q. If the $66,000, which had been agreed on as a share of the net rental, was rejected by the stockholders, it would remain then for them to settle with Mr. Pullman as they could, what share they ought to receive, would it not? Was that your understanding of the contract?

(Objected to as leading.)

A. That was what I supposed in my own mind, would be the result—that when that was rejected, or whatever it would be, that they would try to make a new contract—fix a new sum.

Q. You understood, did you not, as I understand you to have said, that under the eighth section of the lease, Mr. Pullman had a right to elect which of those two things he would do?

A. So I understood.

Recross-examination by Mr. JOHNSON:

Q. I do not yet correctly understand you in this matter. The directors were endeavoring to negotiate with Mr. Pullman what would be a proper rental for the future?

A. Yes, sir.

Q. They conditionally agreed with him upon what they thought would be a proper rental, the condition being that the stock-
318 holders should approve, and that the company should not be bound if they did not?

A. Yes, sir.

Q. That then your understanding was that if that contract, which had been conditionally agreed upon by the directors, was rejected, both parties stood as the original contract gave them rights. Mr. Pullman had waived none of his rights, and you, on the part of the company, had waived none of its rights; isn't that so?

A. Not unless Mr. Pullman might have committed himself by having chosen to have a new contract. How far that would have committed him, of course I do not know.

Q. But that he took the chance of himself, did he not?

A. Well, I suppose he had his legal rights; whatever they were I do not know.

Q. But may I take it, at no time did the board of directors undertake to make any modification or reduction of the rights that the company had, excepting upon condition that the stockholders should approve?

A. Undoubtedly.

Q. And that intention on their part not in any way to modify the rights of your stockholders under the contract was at all times communicated to Mr. Pullman when it was necessary to do so?

A. So far as I know.

Q. When did Mr. Pullman elect to pay anything other than the $264,000?

A. My impression is that that was the understanding from the beginning.

319 Q. Such understanding was not made in any way the subject of resolution by your board, was it?

A. No.

Q. It was just loose talk between yourselves?

A. It was our official talk between ourselves.

Q. But not put in any way in the shape of any agreement?

A. No.

JOHN A WRIGHT.

Sworn and subscribed to before me.

SAMUEL BELL,
Special Examiner.

320 CHARLES S. ATTERBURY, having been duly sworn, was examined as follows:

By Mr. ISHAM:

Q. Where do you reside, and what is your occupation?

A. I reside in the city of New York, and am an attorney and counsellor at law.

Q. Were you acting in a professional relation for the Pullman Palace Car Company in the fall of 1884 and the spring of 1885?

A. I was so engaged, commencing early in the month of December, 1884, and continued several months succeeding that time in that relation.

Q. Did you take a part in the negotiations and arrangements that occurred between the officers of the Pullman Palace Car Company and the Central Transportation Company in the month of December, 1884, and January, 1885?

A. I did. Those negotiations ran, I think, into February.

Q. You were familiar with the lease "Exhibit A" to the bill of complaint in this case between the Central Transportation Company and the Pullman Company?

A. I was.

Q. And also with the railroad contract between the Pullman Company and the Pennsylvania Railroad Company expiring on the 27th of January, 1885?

A. Yes, sir.

Q. You participated in the negotiations that occurred between the Pullman officers and the Central Transportation Com-
321 pany with reference to the renewal or making of a new contract with the Pennsylvania Railroad Company and the adjustment of the relations of the Pullman and the Central Companies under that lease, did you not?

A. I was here many times during the period you refer to with Mr. Pullman, General Porter and other officers of the Pullman Company, meeting the officers of the Pennsylvania Railroad Company and also officers of the Central Transportation Company upon the matters referred to.

Q. How often were you here during the period of time that you have mentioned?

A. I was here very frequently from early in the month of December until the contract with the Pennsylvania Railroad Company was closed and the contract with the Central Transportation Company delivered. I think there was not a week that I was not here, and, perhaps, two or three days in every one of the weeks including nights.

Q. How much of that time was occupied in your negotiations and interviews with the officers of the Central Transportation Company?

A. I should think that the time, perhaps, was equally divided. The two contracts or arrangements were being negotiated *pari passu* by us. We were going from one office, or rather from one meeting to the other meeting—perhaps as much time at one as the other.

Q. Please state what was the subject-matter of the negotiations with the Central Transportation Company, how these negotiations arose, so far as you know, and to what they led.

322 A. The subject-matter of our negotiation with the Central Transportation directors and officers was the determination of what rental should be paid after the 27th of January in lieu of the rental of $264,000, payable under the terms of the original lease. That negotiation depended upon the arrangement for renewal of the contract with the Pennsylvania Railroad Company, which, as I said before, was going on at the same time. We were endeavoring to determine what we should pay in lieu of the rental of $264,000, having in mind what arrangement we could make with the Pennsylvania Railroad Company and what was a fair share of our returns from operations of such new contract as we might make with them, to which the transportation company would be entitled.

Q. In negotiating to ascertain and determine the fair share of the rental which should be paid to the transportation company, were the parties acting under, and professing to act under, the provisions of the eighth section of the lease between the Pullman Company and the transportation company?

(Objected to as leading and irrelevant.)

A. It was under that provision of the contract that we were undertaking to negotiate what share of the net revenues the transportation company should have. We were trying to agree with them upon that share.

Q. How had the parties come, if you know, to be adjusting their future compensation upon that basis? What disposition, if any, had been made of the original rental fixed in the lease?

(Objected to as irrelevant and leading.)

323 A. The original rental of $264,000 was regarded and treated as a thing of the past, and what we were after was to determine what sum in lieu of that would be a fair sum to pay the Central Transportation Company for its share of the revenues under the lease, in view of the fact of the old Pennsylvania railroad contract terminating on the 27th of January and the new one, which we were trying to make, being such that we could not afford to pay them any such rental as theretofore.

Q. Did you participate in the earlier negotiations between these companies on the subject of this lease and these rentals?

A. I did not. I first came into this matter early in December, 1884, following, I think, a Mr. Bacon, who was counsel for the Pullman Company, and who had had to do with these matters and negotiations immediately preceding my coming into the matter.

Q. At the time that you were engaged in these negotiations what was the understanding of the parties so far as you know as to the disposition of the old reserved rental of $264,000?

(Objected to as immaterial; the understanding of the parties not embodied in the shape of an agreement being irrelevant.)

A. The understanding of the representatives of the Central Transportation Company, with whom I was in negotiation during all this period, as expressed by them, and assumed by us, was that the $264,000 rental was, as I said before, a thing of the past. There was nothing more to be said or done about that. That was
324 ended. It was admitted that the moment the then present Pennsylvania Railroad Company contract came to an end there was an end of the $264,000 rental.

Q. What was to be the rental in lieu of that or compensation under the lease after the expiration of the Pennsylvania railroad contract?

A. We were trying to find what was a fair rental in lieu of that in view of the new Pennsylvania railroad contract, and agree upon it. It was to be a share of the earnings under the new Pennsylvania contract, as well as we could determine upon it.

Q. Under the provisions of that lease?

A. Under the provisions of that lease. That was the paper by which we were going all the time.

Cross-examination by Mr. JOHNSON:

Q. You have been asked something about the understanding of the parties. What agreement was ever entered into between the parties that you knew of, excepting the agreement of the 27th of February, 1885, which was submitted to the stockholders of the transportation company for their approval?

A. There must have been an agreement come to between the transportation officers and Mr. Pullman, at the time I came into the negotiations, which resulted in the making of the contract of the 27th of February, for the reason that it was frequently expressed by, I think, all the parties who were present at the negotiations, both on behalf of the Central Transportation Company and
325 on behalf of the Pullman Company, that there was no more rental of $264,000 to be paid, and this was assumed by all of us in our negotiations as a preliminary to our efforts to come to an agreement as to what sum or share of the revenues under the new contract with the Pennsylvania Railroad Company should be paid to the Central Transportation Company in lieu of this old rental.

Q. Did you ever see any such agreement?

A. I did not.

Q. Did you ever ask whether there had been any resolution of the board of directors of the Central Transportation Company making such an agreement?

A. I never did.

Q. Then all you mean to say, is that you have no personal knowledge of such agreement, but you assumed its existence for the reasons that you have given us?

A. With some qualifications, I think that is substantially the fact.

Q. Did any one, on behalf of the Central Transportation Company, ever say, prior to the resolution of the board of directors ap-

proving the contract, which was executed on the 27th of February, 1885, that there had been any prior modification of the lease between the Pullman Company and the Central Transportation Company?

A. I do not know that I ever heard any one say just that thing.

Q. Do you not know that Mr. Pullman claimed and asserted that he entered into the contract which he ultimately entered into with the Pennsylvania Railroad Company, only upon the faith of the agreement of the 27th February, 1885?

326 A. I think Mr. Pullman said that; that is my recollection.

Q. And you do not know that he said he would not enter into any contract with the Pennsylvania Railroad Company until that agreement was signed?

A. I think he so said.

Q. And do you not know that he said that the reason that he so insisted was because, if that contract was not signed, he would be signing the Pennsylvania Railroad contract, and would have no protection against the Central Transportation Company, which would hold him on the old lease?

(Objected to as immaterial.)

A. I do not know that he used any such expression as that.

Q. Do you remember testifying on a previous occasion to this effect, speaking of a meeting just before the contract of the 27th of February, 1885, was executed:

"Mr. Lane said to me, I think we ought to have in that—I think we ought to have in that—if you will agree to let us put it in—a clause providing that this contract does not become obligatory upon the Central Transportation Company until it has been ratified by the stockholders. I said, Mr. Lane, 'we cannot agree to that. We cannot think of it for a moment.' Mr. Pullman, who was standing by, happened to overhear this, and he came up and at once entered into conversation. I think it was between the three of us, near the window. He said, 'We cannot take this condition of affairs. We have got to give our answer this morning to the Pennsylvania Railroad Company. We have got to give it upon a contract executed and delivered by the transportation company. Unless we
327 have that contract we cannot go to Mr. Roberts and accept the Pennsylvania Railroad contract'—some talk of that sort. Mr. Lane seemed to be anxious to have some clause of that kind inserted as a qualification of the instrument; but he saw that we would not, and could not, agree to it, and Mr. Lane then turned to Mr. Bingham and said, 'Sign the contract.'"

Do you remember testimony like that being given by you on a previous occasion?

A. If that is my testimony, I have no doubt it is true. I have the recollection generally that it was something about like that that I said.

Q. Do you remember, also, testifying on that occasion to an interview after the execution of the contract of the 27th of February, 1885, when Mr. Bingham came over to New York with Mr. Biddle as his

counsel, and testifying that Mr. Bingham asked Mr. Pullman to release the company from that contract of February 27th, and then saying:

"Mr. Pullman refused. He said he was in a position—had put his company in a position where he could not release the contract, or waive it in any way. He had assumed this obligation with the Pennsylvania Railroad Company upon the faith of that contract, and that as trustee for his company he had no right, even if it were proper for him to do it in other respects—he had no right to waive this contract, and leave his company in the position it would be under its contract with the Pennsylvania Railroad Company, and no contract with the Central Transportation Company, except the old lease which required the payment of the rental of $264,000."

A. I cannot say that I remember now testifying just what you have read, but if those are the minutes, I have no doubt I did.

328 Q. And if you did so testify on that occasion, you are sure that it must have been truthful?

A. I have no doubt it was true.

Q. Do you remember testifying also on that occasion:

"Q. There was a resolution of the stockholders of the Central Transportation Company, to which some reference has been made; did you know it at the time?

"A. That I knew at the time, and I understood that these gentlemen (speaking of the directors of the Central) wanted to have a clause limiting the effect of this contract, or make it conditional upon its subsequent ratification by the stockholders in order to relieve them from any responsibility in the execution of the paper and delivery of it in view of the resolution of the stockholders."

(Objected to as immaterial.)

A. I remember it so far as this: that I believe that that is true. If it is in those minutes, it was true: that is my present recollection.

Q. Do you remember on that occasion the following questions and answers:

"I understood that the stockholders' resolution authorized the board to make such modifications in the existing lease as they might deem to be necessary, and then the language to report their action—I do not remember whether I quote accurately or not—to the stockholders for approval was not intended."

"Q. You saw the resolution, did you?

"A. I saw a copy of it, I suppose.

"Q. Who furnished you with that copy of the resolution?

"A. I cannot tell you just when or how I first saw it.

"Q. But antecedently to this meeting at Mr. Lane's you had had a copy of the resolution?

329 "A. Yes, sir; I had seen it.

"Q. So that whatever your interpretation of it was you were acting with knowledge of the words?

"A. That resolution.

"Q. Did any member of the board of directors at any time ex-

press any intention to assume the responsibility of acting contrary to that resolution?

"A. I do not know of any occasion on which any member of the board assumed to act contrary to the resolution.

"Q. Or contrary to it?

"A. I say contrary to it.

"Q. Therefore, may I take it that at the time this paper was delivered you had not been apprised by any member of the board that he individually, or the members collectively had agreed to dispense with the requirements of the resolution?

"A. I recollect nothing that was said in regard to it at all.

"Q. Then when the lease was before you both at Mr. Lane's office and at the Continental, there was a desire expressed to physically insert in writing a proviso making it dependent upon the approval of the stockholders?

"A. Yes, sir. The first I knew of the action of the directors was on the Friday when we were called into the board meeting, and we were told by some member of the board in the presence of them all that they had adopted the agreement which Mr. Lane and I had prepared.

"Q. Was the question submitted to you during the course of these negotiations and actions as to the power of the stockholders to interfere in this matter?

"A. I considered that question.

"By the COURT: The question is whether that was submitted to you.

"A. By whom, Mr. Johnson?"

By Mr. JOHNSON:

"Q. By the Pullman Company or its officers?

330 "A. I had some conference with Mr. Pullman about it. Whether it was suggested by him, I do not recall.

"Q. That was in connection with the submission to you then or previously of the terms of this resolution of the stockholders, was it?

"A. It was previous to the adoption of the agreement by the board of directors."

Q. Do you remember that testimony?

(Objected to as immaterial.)

A. I do not recall the giving of that testimony, but if it is in the minutes, I have no doubt I gave it. I have no reason to doubt it.

Q. Do you remember this testimony on that occasion:

"Q. Why do you think it would be necessary to submit it for approval at all if, when it was submitted after final action had been taken, such approval would have been ineffectual?

"A. This is the case. These gentlemen were put into a very difficult position. They had no alternative. The Pennsylvania Railroad contract was to terminate on the 28th of January. They must either say to us, 'We will agree with you to modify this lease,' or else they must take the other alternative, and the lease would be

cancelled as they were notified, and they would lose all revenue, and have nothing left but their cars and material which would be sold at considerable sacrifice. In other words, their business would be all broken up. Now those were the two alternatives.

"Q. What did you understand the object was in requiring the action of the board should be reported for approval? If it was to be effectual without their approval, the question is, what was the object?

"A. That is what I am trying to do. As I say, these gentlemen had to act on one of two of these alternatives. They were very anxious we should make this contract with the Pennsylvania
331 Railroad Company, regarding something of that kind better than terminating their lease or taking their property back, and they wanted to have, having determined upon the latter, I mean having determined upon the modification of the lease as one of the steps to the making of the Pennsylvania Railroad contract, in which they were interested as well as we—they wanted the approval of the stockholders. A natural thing, it seemed to me, for a board of directors to ask.

"Q. You understood they wanted it afterwards, and not because their action was final?

"A. Yes, sir; I did not understand.

"Q. What did you think would be the good of any disapproval if the action was final?

"A. Well, I can't tell you what might be the result of the disapproval by the stockholders, except that it might ultimately lead to an election of other directors.

"Q. The mischief was already done then?

"A. I say that was the position they were put in. They had these two great responsibilities."

Do you remember that testimony?

(Objected to as immaterial.)

A. If you find it in the minutes, I suppose you have correctly stated it. I do not recall it.

Q. If in the minutes, it was the fact as you understood it?

A. Undoubtedly.

Q. The only agreement that you know of that was entered into between the Pullman Company and the Central Transportation Company in any way modifying the original contract was the agreement of the 27th of February, 1885, was it not?

A. The only agreement that I am aware of was that one, except what I call the understanding that existed when I came into the negotiations, and that was that there was no question then
332 of the $264,000; that it was a mere question to determine what the Pullman Company should pay in lieu of that.

Q. What member of the board of directors of the Central Transportation Company said that?

A. I think I am right in stating that every member of the board of the Central Transportation Company with whom we had negotiations, and those were Mr. Lane, Mr. Bingham, Mr. Wright, Mr.

Howard, and I think there were one or two more, whose names I do not now recall, at one time or another during those negotiations stated that the rental of $264,000 was a matter to be thought of no more; that it was out of the way. The whole negotiation and talk was upon that assumption.

Q. Was it not upon the assumption that it would not be possible to earn in the future $264,000 a year?

A. That I think was the reason of it.

Q. Do you remember what Mr. Pullman told them would be the earnings under any new contract he could make?

A. I do not now recall the figures. We had a good many statements that were made from time to time as new methods of arriving at a share of the revenues came up. I do not recall them, and I have no material with me which would enable me to answer your question.

Redirect examination by Mr. ISHAM:

Q. What, at that time, was your construction and understanding of the 8th clause of the Central Transportation Company lease as to the rights of election given to the Pullman Company?

(Objected to as irrelevant.)

333 A. I understood that contract, then, as I understand it now, as giving the Pullman Company an option in the happening of a certain event or events. That option was either to annul the lease with the transportation company or pay the transportation company a share of the net revenue as should be agreed upon. That is, the agreement was to be as to the amount of the share, and that his right of election was as to one or the other of those alternatives.

Q. Assuming it to have been understood that after the expiration of the Pennsylvania contract a share of the net revenue was to be substituted for the old rental of $264,000, did you find in your negotiations on the part of the representatives of the transportation company acquiescence in or objection to that mode of adjusting the rental?

(Objected to, unless it is proposed to get at an acquiescence which was the subject of a resolution.)

A. They acquiesced in it, and they acquiesced in it so far as that they made propositions to us from time to time of a share of the revenues to be determined in certain methods which they suggested. One method, I recollect, produced about $144,000 a year instead of $264,000 a year. I think they came down to $115,000 or $120,000, and finally, I think, they made a last proposition of $88,000 in lieu of $264,000 with some conditions, I think, of exchange of stock.

334 Recross-examination.

By Mr. JOHNSON:

Q. Did you understand at any time during the course of your negotiations that Mr. Pullman had conclusively elected not to annul

his old contract, but to the Central Transportation Company what would be a fair share of the rental he might derive under any new contract he would make?

A. I can only answer that in this way, by saying that Mr. Pullman was endeavoring to make a contract with the Pennsylvania Railroad Company, or renew the contract with the Pennsylvania Railroad Company; and in order to do that it was necessary that he should know what share of the revenues would have to be paid to the Central Transportation people in lieu of $264,000.

Q. That is the best answer you can give to the question, is it?

A. That is as near as I can come to it, I think.

Q. Did he ever tell the transportation company in your presence or did you ever hear anybody say that he had told them that he had abandoned his right to annul his contract with the Central Transportation Company, and had conclusively agreed that he would pay them in the future what would be a fair share of the rentals he might derive under any new contract he might make?

A. This was the understanding, and I think he so stated and I think these gentlemen assented to it, that if he could make a contract with the Pennsylvania railroad which would give them a share of the earnings, he would make a contract with the
335 Pennsylvania Railroad Company with a view of sharing the earnings with the Central Transportation Company.

(Question repeated.)

A. I do not know that I ever heard him say that in so many words.

Q. What was your understanding in case the Central Transportation Company and the Pullman Company could not agree upon what would be a fair share of the future earnings, that Mr. Pullman had not a right to annul the contract?

A. No, my understanding and the understanding of all the parties, the Central Transportation people and Mr. Pullman and myself, as was expressed at these negotiations, was that in case we could not agree we should then have to go into court and determine what was a share of the revenue that would be payable to them under the new contract.

Q. Was there anything said by the Central Transportation people about going into court and determining what would be a fair share?

A. That was considered and discussed quite freely. If we could not agree, that was the alternative.

Q. Why was it that Mr. Pullman insisted upon the board of directors agreeing upon the fixed rental before he would execute the contract with the Pennsylvania railroad?

A. The contract with the Pennsylvania Railroad Company was definite in its terms, and imposed certain obligations upon the Pullman Company. The Pullman Company was of necessity
336 bound to know how far it could live up to them before its execution. One of those things that it had to know was how much of the revenue the Central Transportation Company would be entitled to receive.

Q. But if there was any understanding of any sort or kind that if they could not agree upon what would be a fair rental that the court would determine what would be a fair rental, what was the necessity of having that agreement of the 27th of February, 1885, which fixed the rental, concluded before concluding the lease with the Pennsylvania railroad?

A. Except that Mr. Pullman felt, and very properly, I think, that he could not make his lease with the Pennsylvania Railroad people until he knew exactly what he had to pay the Central Transportation people.

Q. And therefore, he was unwilling to bind himself to make any lease with the Pennsylvania Railroad Company, until the amount that the Central Transportation Company would take was fixed?

A. Well, I do not know whether that conclusion follows as a matter of course, or not.

Q. Did any of you talk about what fraction would be a fair share of the future rental?

A. It went rather into the discussion as to figures than a single fraction. I do not know that at any time there was mention of a single percentage or fraction. I do not recall it now.

Q. Then the subject-matter of negotiation in trying to get at the future rental, was not so much a fraction of the probable future earnings, as a determinate figure?

337 A. Well, it was a proportionate share of the earnings, and whether that was represented by fractions or figures, I do not see the difference.

Q. Did anybody at any time suggest agreeing that the agreement should be not figures, but that it should be a fractional share of future net earnings?

A. By that do you mean a percentage?

Q. I do.

A. I cannot say; there were so many plans discussed.

Q. Did you ever hear any plan, except substantially this—to agree upon a determined rental, Mr. Pullman, from time to time, showing figures of what the probable net earnings would be, in order to induce the Central Transportation Company to fix upon that determinate rental?

A. I cannot answer that question. I do not recollect.

C. S. ATTERBURY.

Adjourned to 3.15 p. m., Thursday, November 10, 1887.

338 THURSDAY, *November* 17, 1887—3.30 p. m.

Present: The examiner, Sam-el Bell, Esq., and Messrs. Dickson, Johnson and Burry, of counsel.

JOSEPH N. MILEHAM, having been duly sworn, was examined as follows:

By Mr. BURRY:

Q. Please state your name, residence and occupation.

A. Joseph N. Mileham, Jersey City, New Jersey; foreman of car-

repairers in the New York, Lake Erie and Western shops, Jersey City.

Q. What are your duties as such foreman in regard to the building or repairing of cars?

A. My duties are that I have charge of both building and repairing cars for the road.

Q. How long have you been engaged in that work?

A. I have been engaged about thirty years in that line of business.

Q. Are you acquainted with the cost of building and repairing cars?

A. Yes, sir.

Q. Do you know how long cars last, or what their life is, on an average?

A. Yes, sir.

Q. Have you had experience in repairing sleeping cars?

A. Yes, sir.

Q. Passenger coaches?

A. Yes, sir.

Q. And freight cars?

A. Yes, sir.

339 Q. State whether or not if sleeping cars are kept in good running order and repair, there is any further depreciation in them on account of age.

A. Yes, sir, there is.

Q. If cars are kept in good repair, as good repair as railroads usually keep their own rolling stock in, is there still any further depreciation on account of age?

A. Yes, sir.

Q. What would that depreciation amount to, reckoned in the per cent. of their cost yearly?

(Objected to.)

A. That is, beyond the natural age, what that would amount to?

Q. Yes.

A. I do not know as I am prepared to exactly tell what that would amount to. Probably it might amount to more or less. If I may be allowed to explain that, that depreciation comes from the car, in one sense of the word, becoming unfassionable, out of date, and necessitates changes, and I am not prepared exactly to give just what that would be.

Q. What is the average life of sleeping cars, passenger cars and freight cars?

A. About fifteen years.

Q. If they are kept in good running order, all necessary repairs made on them from year to year, will they still live fifteen years?

A. Yes, sir.

Q. Will they live on an average longer?

A. I think not; not on an average.

340 Q. By mentioning their life, you mean that after that time they are useless, and are condemned and are broken up?

A. Yes, sir.

Q. Give your best judgment as to the annual depreciation that takes place in sleeping and other cars from year to year due to their age, even if they are kept in good running order and repair.

A. I find it to be from six to seven per cent.

Q. On what? On their original cost?

A. Yes, sir.

Q. Are there any elements about sleeping cars or in the making of sleeping cars, or conducting that business, that renders depreciation either more or less rapid than that of other kinds of cars?

A. I think so.

Q. Please state any that you know of.

A. I think a sleeping car is fully as much exposed, and, being an expensive car, a great many parts of it are more expensive than other cars, and it depreciates faster.

Q. Is there any other element?

A. Not that I know of particularly.

Q. Such as that of fashion?

(Objected to.)

A. Oh, fashion; certainly; there is a depreciation on that very fast; they have to be kept up to the times, improved in style and fashion.

Q. Explain more fully in regard to changes of fashion or style in sleeping cars.

A. Well, we all know that our sleeping cars, of course what we call our very first-class cars, for the use of lines, they are undergoing changes all the time, finding new improvements and adding

341 to for the comfort of passengers, and you have to be very careful to keep with the times; there is a great deal of competition, more so, probably, than in other cars.

Q. Do railroad companies ever reject them, or otherwise?

A. Yes, sir; they do. I know ours do, and I know the most of them do.

Q. State anything you know in regard to that.

A. Well, when a sleeping car becomes old and out of date and unfashionable, it has got to be overhauled and brought up to the standard. If they do not the companies reject them.

Q. If a car is operated, as you state, for fifteen years, being kept in good repair and receiving occasional thorough overhaulings, will it still wear out in that fifteen years?

A. As an average, I think it would.

Q. Are you a member of the Master Car Builders' Association of the United States?

A. Yes, sir.

Q. How long have you been such member?

A. Oh, I can't tell. Probably twenty years.

Q. Have you attended any of their general congresses?

A. Oh, most all of them.

Q. Do you — whether they have established any rules about annual depreciation taking place on cars that are well kept up?

(Objected to.)

A. They have in regard to all freight cars.

Q. Do you know what the rate is that is fixed by that association?

A. Six per cent. depreciation.

342 Q. Do you think the depreciation is as great on sleeping-cars as on freight cars?

A. Yes, sir; I do.

Q. Is it not greater?

A. I think so; a little.

Q. Who constitute the membership of that association?

A. Oh, most all car masters, superintendents of motive power, etc.

Q. Are its rules and regulations accepted generally by the railroads in the United States?

A. Yes, sir; most all of the main lines are working under those rules today in the interchange of cars.

Q. Do you know what rules those different railroads use for settling with each other in regard to lost or destroyed cars?

A. Yes, sir.

Q. What rules do they settle on?

(Objected to as immaterial.)

A. We are settling on the six per cent. rule.

Q. Established by whom?

A. By the car masters' rules; up not to exceed sixty per cent.

Q. That is, if a car has been lost or destroyed, in making a settlement of it there is deducted from the original cost a depreciation of six per cent. per year?

A. Yes, sir.

Cross-examination by Mr. JOHNSON:

Q. Are those rules in writing and printed?

A. Yes, sir.

343 Q. Please produce copy of all rules that bear upon the subject.

A. I haven't any copy here.

(Mr. Burry produces a copy of the rules referred to.)

Q. Please turn to the copy of rules handed to you and show me the rule to which you have referred.

(The witness turns to the following rule: "Depreciation due to age shall be estimated at six per cent. per annum upon the yearly depreciated value of bodies and trucks, provided, however, that an allowance for depreciation shall in no case exceed sixty per cent. of the value new.")

Q. Does not that apply exclusively to freight cars?

A. I said so; yes, sir.

Q. And when therefore the question was asked you as to whether or not there was any rule of depreciation, after you had testified to it being in freight cars, you were speaking of, or you meant to cover, merely the same class of cars, freight cars?

A. Certainly.

Q. Suppose a car under your rules is sixteen years old and there is a loss, at what rate is it settled for?

A. We would have to pay for the car less the sixty per cent.

Q. You would have to pay forty per cent. of the car, even if it was sixteen years old? Now are there any statistics which show the life of various cars from which you can strike the average that you have spoken of?

344 A. I do not know as there is any statistics exactly showing it.

Q. What experience have you had with regard to running, operating, superintending or examining sleeping cars in order to ascertain their life?

A. I have had considerable experience.

Q. Now, how many sleeping cars can you recall, the life of which you know?

A. Well, a number on our own road.

Q. Built by the Pullman Company?

A. Yes, sir. Some built by the Erie Company.

Q. How old is the oldest car that you know in actual use on the road?

A. I know some cars that are on the road now that was built, I think somewheres about twenty-five years ago.

Q. Are they used in first-class business?

A. They ain't used at all for the last ten years.

Q. I asked for cars in use.

A. I don't know of any. If I understand the question, I do not know of any cars today on the Erie road that are in use, that are fifteen years old. I don't think I do; I don't know.

Q. Is not that largely because the fashion has been changed?

A. Well, the cars are in bad shape.

Q. Can you now recall any sleeping car which has not been in an accident that was worn out after fifteen years; the body or the truck of the car?

A. Well, we call them worn out.

Q. What do you mean by that? The fashion so changed that they have no longer any use for them?

345 A. Yes, sir; and dilapidated.

Q. In what respect? What is there, apart from an accident, to wear out the wood-work of a well-built car in fifteen years?

A. Everything.

Q. What is the average cost of an ordinary passenger car?

A. An ordinary good first-class passenger car costs about from $5,500 to $6,000.

Q. And what is the average cost today of a first-class Pullman sleeping car?

A. I do not know exactly that I could tell you the real average cost of their latest cars.

Q. You know what your road has been paying for them—the last ones that you got?

A. I do not think our road bought any.

Q. Do you manufacture your own?

A. No, sir.

Q. Where do you get them from—as a gift?

A. From the Pullman Company.

Q. I thougl t you said you did not know that they had bought them?

A. Understand, I said I did not think our company bought them; they are furnished by the Pullman Company.

Q. They are run over your road; now, are there any statistics anywhere from which you have gathered the percentage that you have stated to us; that is, statistics of the destruction, depreciation or deterioration of palace cars, or sleeping cars?

A. Yes, sir.

Q. Where are they?

A. Of passenger cars?

346 Q. Sleeping cars?

A. Nothing more than what I have seen upon our own roads, and taking in comparison the same with a first-class coach.

Q. How many cars do you have in your mind when you strike the average; how many examples have you averaged?

A. Oh, a number of them; a number of those old cars.

Q. About how many?

A. Probably ten or twelve of them.

Q. Then, your idea has been gathered from your examination of ten or twelve sleeping cars?

A. Yes, sir.

Q. Tell me the ages of those various cars, ten or twelve in number, that you have in your mind as samples.

A. Well, the age they had been in the service, you mean?

Q. Yes.

A. Well, I say about fifteen years; between fifteen and seventeen years.

Q. Were they not built under the old style, in the old way, and was not their disuse largely owing to the fact that they were unfashionable?

A. Well, I mean that they were the old style of cars fifteen years ago; they have been greatly improved.

Q. But were not those cars disused more because a better class of cars had been introduced than for any other reason?

A. Well, I think they was well worn out in the service.

347 Q. Do you recall that they were?

A. I do; yes, sir.

Q. Name a particular car.

A. I can't do that; not one particular car.

Q. By whom were those cars that you speak of built?

A. They were built by the Erie road, some of them.

Q. And were you there when they went in service originally?
A. No, sir. I know when they went on, though.
Q. How so?
A. I was in Buffalo when they came there.
Q. Then you were in the service when they came?
A. No, I was not in the Erie service.
Q. Did you remember those cars, the time that they went on?
A. Yes, sir.
Q. Then you can tell me the year. Did they all go on about one time?
A. Oh, no; they did not go on at one time.
Q. Do you recall the years that the various cars went on?
A. Not exactly just the years.
Q. Is not what you have given us a sort of rule of thumb?
A. No, sir; there is no rule of thumb.
Q. Why do you make six per cent.? Why not seven, why not eight, why not nine, why not five? Why did you just hit on the percentage that you have given us?
A. From our practice and observation.
348 Q. That practice and observation is the result of what?
A. Experience.
Q. Any statistics which you can refer us to?
A. No, sir; not particularly.
Q. Are there any statistics anywhere kept showing the life of a large number of cars?
A. We keep the age. Our books show when the car is built.
Q. Are those statistics ever gathered together so as to give any practical information, or must you look through your whole books to find it out?
A. Certainly.
Q. Do you seriously say that a freight car will not depreciate more rapidly than a well-built sleeping car?
A. I do not see why it should.
Q. In the first place, what does an ordinary freight car cost?
A. A good first-class freight car nowadays?
Q. Yes.
A. Somewheres about $500.
Q. Is it built of as good materials as the other cars?
A. Just as good as far — it goes.
Q. Do you mean to say as good lumber is put in a freight car as is put in a sleeping car, or as well-seasoned lumber?
A. Just as good a sill is put in that car as there is in a sleeping car, exactly.
Q. Just as good lumber?
A. Not in all particulars, understand.
Q. "Good," is a relative term?
349 A. The sills and vital part of that car are just as good as what is put in a sleeping car.
Q. What sort of lumber is put in a freight car?
A. White oak.
Q. And the sort that is put in a sleeping car?

A. Yes, sir; and Georgia pine.

Q. And the freight car is taken as good care of as the sleeping car?

A. No, sir; I should say not just as good care — taken of it.

Q. One is housed against the weather—the sleeping car?

A. No, sir.

Q. Do you leave that out exposed to the weather?

A. Yes, sir; our sleeping cars today, on the Erie road, stand out just as much as our freight cars, exactly.

Q. Maybe your freight cars you house, and your sleeping cars you leave out in the cold?

A. No, sir; only when we haven't the room; we haven't the sheds to store our cars in, only when they are repaired.

Q. And your testimony is, that the freight car is just as well taken care of as the sleeping car, to guard it against depreciation?

A. I think so; it is just as carefully watched and just as carefully repaired.

Q. What do you say is the average life of a freight car?

A. About fifteen years.

Q. And about what percentage of repairs would be put on that freight car in the course of fifteen years?

350 A. I should say we would put on from five to six per cent.

Q. From five to six per cent. each year?

A. Yes, sir.

Q. Then, in speaking of the depreciation of the freight car, you have in view a car upon which an outlay is made per annum, of some five or six per cent. of its cost, and at the end of fifteen years, a freight car thus improved, you think, would be worn out?

A. Yes, sir.

Re-examination by Mr. DICKSON:

Q. When you say you had known of ten or twelve sleeping cars, would the observation that you had of them by way of comparison with the other cars enable you to judge as to the rate of depreciation of the Pullman cars as well as of the ordinary coach or passenger car?

(Objected to as leading.)

A. Yes, sir.

Q. How many freight cars and passenger coaches have you under your charge at this time?

A. We are handling for repairs probably about two hundred and fifty freight cars per day, or three hundred.

Q. How many passenger coaches?

A. Probably fifty or sixty per day.

Q. What is the number of cars on the Erie railway?

A. I can't tell you exactly. We have something over thirty thousand in the freight department, and probably some four or five hundred in the passenger.

(Signature waived.)

351 HENRY S. BILLINGS, having been duly sworn, was examined as follows by Mr. Burry:

Q. Please state your name, residence and occupation.

A. Henry S. Billings; my residence is Hornellsville, New York, and occupation division superintendent of the Pullman Palace Car Company.

Q. How long have you been connected with the sleeping-car business?

A. Since April, 1865.

Q. Have you any experience in building or repairing sleeping cars, or other railroad coaches?

A. I have some.

Q. For how long have you had such experience?

A. Since 1867 or 1868.

Q. Are you acquainted with the cost of building and repairing sleeping cars?

A. Yes, sir.

Q. Do you know how long sleeping cars last upon an average, or what is their life? If so, state it.

A. That depends on the manner in which they are cared for. From fifteen to twenty years.

Q. What do you think would be the average life of them if well cared for?

A. Fifteen years; from fifteen to eighteen years.

Q. If a car has all necessary running repairs put upon it, and is also from time to time modernized or brought up to date, or has what are sometimes called extraordinary repairs put upon it, does that change the average life of it as stated by you?

A. No, sir.

352 Q. Then the estimate that you give is of cars which have been treated in the manner specified in my last question?

A. Yes, sir.

Q. Why do you call a car useless or worn out at the end of fifteen or twenty years? What is its condition when it is so condemned? Is it just on account of looks, or serious defects?

A. On account of its becoming worn out and out of fashion, out of date.

Q. What do you mean by "worn out"? So it is not a serviceable car?

A. That is not always the case.

Q. What do you mean by "worn out"?

A. We have cars that are fit to perform service which are really unservic-able on account of their style and fashion. They could be run safely. They could perform service were it not for their fashion.

Q. Could those cars be operated safely as sleeping cars?

A. Yes, sir, there are such cases.

Q. Have you any cars over the average life of them, from fifteen to eighteen years, as you put it, that could so be operated safely, or that would be accepted by any railroad company?

A. Not acceptable. That is why they have depreciated, because they are not acceptable to railroad companies.

Q. Could you get any railroad companies to allow them to run upon their tracks as sleeping cars?

A. No, sir. We have some cars standing idle now.

353 Q. Are you referring now to cars that have been kept in proper repair and modernized, as you call it?

A. Yes, sir.

Q. What is the annual depreciation upon a car due to old age which has been kept in good running order, as described by you?

A. I am not aware that there is any fixed annual depreciation in sleeping cars.

Q. Give your best judgment as to what is the annual depreciation.

A. My best judgment would be that six per cent. should be set aside as the depreciation.

Q. You have testified that cars, even if kept in good order and repair and with the necessary extraordinary repairs, will only last from fifteen to eighteen years, and at that time to continue the business it will be necessary to build a new car.

A. That is my judgment.

Q. To provide a fund for so renewing or rebuilding cars retired through being worn out, what percentage of the cars do you think ought to be, on the average, set aside for such purpose?

A. I just answered that; six per cent.

Q. Do you know of any elements in the sleeping-car business that make sleeping cars more subject to depreciation than are passenger coaches or freight cars?

A. I have no experience with passenger or freight cars, understand. I judge, however, that there is, from the peculiarity of our service.

Q. What are any such peculiarities?

A. The peculiarities of competition and dictation from the companies under which we serve.

354 Q. What do you mean by "dictation"?

A. In regard to class.

Q. Explain it more fully.

A. I can recite a circumstance, if I may be allowed, of a road that this gentleman just testified about, where we have now cars that are less than the average age as stated, that are safe to run, but will not be permitted to run on account of their being out of date, their fashion, and on that account we have been obliged this season to furnish new cars, and stand those aside, to compete with the railroad companies' competition, and to compete with ourselves, you might say, on their lines.

Q. From an experience with, or observation of, how many cars do you find your average life of a car as stated in the testimony?

A. As a matter of fact, we haven't in service today one sleeping car on the Erie road that was in that service when I took charge of the management.

Q. My question is, from an observation of how many sleeping

cars altogether on the Erie road or elsewhere, do you from your estimate that from fifteen to eighteen years is the average life of a sleeping car?

A. From an average of the number in use on that road?

By Mr. DICKSON:

Q. How many cars?

A. How many cars employed today, or in 1865?

Q. How many have come under your observation that you can judge by?

A. I would state, fifty cars.

Q. How many did you say were on the road now?

355 A. I think we have some sixty cars.

Q. Sixty cars now?

A. Yes, sir.

Q. During the twenty-odd years that you have been there how many have passed under your eyes?

A. How many cars have I had charge of in that time?

Q. Yes.

A. I couldn't tell you from recollection. A great many.

Q. About how many? Upwards of how many?

A. Oh, upwards of a hundred, I suppose.

By Mr. BURRY:

Q. Are you superintendent of the repair shops at Wilmington?

A. Yes, sir.

Q. Have you charge there of the repairing of Pullman sleeping cars?

A. Yes, sir.

Q. How many cars have come under your observation which were sent there for repairs altogether?

A. Oh, we repair from twenty to sixty per month.

Q. How long have you had charge of the repair shops at Wilmington?

A. Since October, 1886.

Cross-examination by Mr. JOHNSON:

Q. If I correctly gather your testimony, it is not so much the wearing out of sleeping cars that makes you fix from fifteen to eighteen or twenty years as their average life, as their becoming unfashionable owing to the greater improvements constantly

356 going on — their construction? Is that not so?

A. Well, the fashion enters largely into the going out of service, but they do die; the old coach is worn out.

Q. But you would not fix that fifteen to twenty years as the average duration of their life if you were not obliged also to take into consideration the unfashionableness of the car after that period, would you?

A. It wouldn't be possible to keep a car alive twenty years without renewal.

Q. But you had put to you a question of modernizing the car and keeping it up. Now a sleeping car kept up, fully repaired from time to time, if it did not become unfashionable would certainly last longer than from fifteen to twenty years?

A. It is possible. There is a possibility that a car might be kept alive more than twenty years, but as an average my best judgment is that they do not.

Q. In point of fact, as you now recall, the sleeping cars which you have disused, have they not largely gone out of use because they were not equal in style and fashion to the modern cars?

A. That is one of the depreciations; it enters largely into the depreciation; one of the peculiarities of our service.

Q. During the last twenty years the sleeping-car service has been one in which there has been much competition and very much improvement, has it not?

A. Certainly.

357 Q. To a certain extent they are the show cars of a company, and the company wishes to have the very best and the very newest styles for the sleeping cars.

A. Yes, sir. I will explain that by the fact that we have to build cars to compete with our service occasionally. That enters largely into the depreciation in our service.

Q. And today the sleeping cars have reached a very high degree of fashion, style and finish, have they not?

A. Yes, sir.

Q. Being constantly improving in that respect up to the present date?

A. Yes, sir.

Q. And bearing in mind the fact of that varying fashion and constantly improving style, has helped you to make the calculation that you have given us?

A. As a matter of fact our cars pass out of service in the time that I state. There is a possibility of cars being kept in service twenty years, but there is a great many of our cars that have passed out in five years.

Q. Because they have become unfashionable?

A. Yes, sir. I can recall to you cars that I have in my mind now, show them to you, if you will take the pains to go with me, that did not perform a service of five years.

Q. Not because they were worn out, but because other cars were introduced that were more fashionable?

A. Yes, sir.

358 Q. Better?

A. Yes, sir.

Q. Improved?

A. Yes, sir. But they are cars not alive today; they are not serviceable today.

Q. There are no statistics kept showing the average life of sleeping cars or passenger cars, are there?

A. I have none.

Q. And to a certain extent any evidence upon that subject, there being no statistics preserved, is necessarily a matter of conjecture?

A. Well, we arrive at it as you do to your knotty questions, by conferring with men of our profession who are familiar with the condition of cars.

Q. But in point of fact no one could say, as with regard to the lives of human beings, or many other things: "I form my judgment upon statistics of a given number of cars preserved and illustrating it"?

A. I form my judgment on my actual experience on cars that I can name to you.

Q. How many sleeping cars could you name as being those upon which you form your judgment?

A. I can name to you—perhaps it would be necessary for me to refer to a paper that I have about me—from twelve to fifteen.

Q. What have been the respective ages of those twelve or fifteen cars?

A. Well, my best judgment is that there is none of those cars that has performed service over fifteen years. I have two in my mind that have done a little better than that, but they are out of service today, virtually.

359 Q. But was not that largely because newer, better or more improved cars were introduced?

A. I have admitted that.

Q. Let me take you on another point. In speaking of the average life of a sleeping car as being from fifteen to eighteen or twenty years, what annual percentage of repairs do you have in your mind as having been done on such car?

A. Oh, I have spent as high as ten per cent.

Q. That would not fairly represent an average; that was exceptional repair, was it not?

A. Well, I think that is a pretty fair average on a car that has been in service for any number of years.

Q. But I want to start the car from its youth.

A. If you take it at six months it is different. You couldn't strike it less than ten years.

Q. Then you have in your mind in fixing that life, a car upon which there has been an average annual expenditure on original cost of about ten per cent.?

A. About ten per cent. I have cars in my mind that I am certain that amount will cover it.

Q. What is the price today of a first-class Pullman car?

A. From $14,000 to $18,000.

Q. You do not know that they are delivering the very best cars in their service for $10,500?

A. I do not.

Q. Have you bought any recently, or known of their being bought?

A. I have not at that price.

360 Q. At any price. Have you in your mind an actual pur-

chase of cars within the last one or two years, first-class Pullman cars, at a price known to you?

A. Yes, sir; at the figures I name, from $14,000 to $18,000.

Q. When was that?

A. Well, I think within a year.

Q. What sort of a car? An ordinary sleeping car of the improved model?

A. Improved sleeping cars are costing our company today, without the official figures, from $14,000 to $16,000.

Re-examination.

By Mr. DICKSON:

Q. Am I correct in understanding that the depreciation of cars by change of fashion may lead to their rejection within five years, or less, but that the life of a car beyond which it is unsafe to run, not merely unserviceable by reason of change of style, but unfit to run by reason of being no longer safe for the carrying of passengers, is from fifteen to eighteen years?

(Objected to as leading and not correctly stating the witness' testimony.)

A. Yes, sir; they become old and creaky, rickety, rattling and objectionable, and have to be retired.

Q. Discarding all questions of style and appearance, please state what would be the average life during which a car could run and be reasonably safe for the purpose of transporting passengers?

A. In my judgment, they can be kept alive from fifteen to
361 eig-teen years. There might be an exceptional case where it would be extended. You asked me for an average, I believe.

Q. The average would be from fifteen to eighteen years?

A. I think so.

By Mr. JOHNSON:

Q. Do you recall any sleeping cars which were condemned after fifteen years' service simply on the ground that they were unsafe and unfit, and not also because they were old-fashioned?

A. Yes, sir; we have one standing in Jersey City yard today. Well, I don't know that I would say it is entirely unsafe, but it is objectionable on account of its racketing, like your old wagon that you wouldn't want to take your wife out in.

(Signature waived.)

Adjourned until Friday, November 18, 1887, at 3.30 p. m.

362 FRIDAY, *November* 18, 1887—at 3.15 p. m.

Present, Samuel Bell, Esq., the examiner; Messrs. Isham and Burry for plaintiff, John G. Johnson, Esq., for defendant.

GEORGE M. PULLMAN, having been duly sworn, was examined as follows:

By Mr. ISHAM:

Q. You reside in Chicago?
A. Yes, sir.
Q. You are president of the Pullman's Palace Car Company?
A. Yes, sir.
Q. And you have been throughout its history, have you not?
A. Yes, sir.
Q. You are familiar with the lease that subsisted between the Central Transportation Company and the Pullman Palace Car Company which is involved in this case?
A. Yes, sir; I am.
Q. And with the contract of the Pullman's Palace Car Company with the Pennsylvania Railroad Company which expired on the 27th of January, 1885, which is in question in this case?
A. Yes, sir.
Q. As that railroad contract approached the time of its expiration, the 27th of January, 1885, state whether you made for the Pullman's Palace Car Company any communications with reference to that event to the directors of the Central Transportation Company; and if so, state generally what they were.

363 A. A year or more prior to the expiration of the contract referred to, Mr. Cassatt, vice-president of the Pennsylvania Railroad Company, informed me that his company would not renew its contract with the Pullman's Palace Car Company, and I so informed the officers of the Central Transportation Company.

Q. What did he say about making any contract at all if he did not renew yours?

A. He said they would not make any contract with the Pullman's Palace Car Company and would operate their own cars. I was making every effort to ascertain what the objection of the railway company was to the renewal of the contract and to overcome it if possible. Subsequently, I do not remember just how long a period, I had an interview with Mr. Roberts, the president of that company. Mr. Roberts informed me that there were some reasons why a contract with the Pullman's Company would be advantageous, and that he was willing to enter into negotiations for the making of such contract relating only to sleeping cars and not parlor cars, but he informed me at the same time that they could dispose of their five per cent. car trusts, I think, at a premium, and could build with the proceeds all the sleeping cars they would require, and that they would not be willing to allow the Pullman's Company more than one or two per cent., at the outside, profit over and above the interest that the railroad company would have to pay, and that amount in consideration of the possible advantages of the connection with the Pullman Company's system of lines.

364 Q. Did he say what interest the railroad company would have to pay?

A. Five per cent. car trusts. I realized it would be impossible, under such conditions, to make a contract that would pay the Pullman Company a reasonable profit and allow anything to the Central Transportation Company. Therefore, there seemed to be no other course than to proceed to annul the lease at the expiration of the contract then existing with the railroad company.

Counsel for the company, under my instructions, prepared memorandum and papers relative to the cancellation of the lease and surrender of the property, and with the auditor of the company, accompanied me to Philadelphia, where I met the directors of the Central Transportation Company and informed them of the facts in relation to my interview with Mr. Roberts, from which it would appear to be the only course left to me to annul the lease and surrender the property embraced in the contract.

Q. Did you inform them of your purpose in that respect?

A. I did and said that I had my assistant counsel, Mr. Bacon, and Mr. Davie here for the purpose of arranging the necessary details.

Q. Who was Mr. Davie?

A. Mr. Davie was the auditor of the Pullman Company.

Q. After you had made these statements to the directors of the Central Transportation Company did any further negotiations with them follow? If so, state what was the subject of them, what they were, and what result they led to?

365 A. The directors stated to me that it was their desire that I should not cancel the lease, that the rental of $264,000, of course, would terminate with the railroad contract, and they urged me to continue my negotiations with Mr. Roberts and make the best contract that I could, and they would take their fair share of the net revenues that could be obtained under the contract, as provided in the eighth clause of the lease.

Q. State whether you came to any definite understanding with them on that subject and what was done?

A. I proceeded, under that understanding, with the negotiations with the Pennsylvania Railroad Company and had a great many interviews with the officers of that company and discussions as to the terms of a new contract, and I had about as many interviews with the officers and directors of the Central Transportation Company, in which I reported to them the progress of the negotiations from time to time, and with the help of the officers of the Pullman Company, the general eastern superintendent, Mr. Goodman, and the auditor, Mr. Davie, and Mr. Cotringer, the secretary of the Central Transportation Company, careful computation of the earnings under the old contract and estimated earnings under the new contract which was proposed by the Pennsylvania Railroad Company was made with a view of determining the sum that would be the equivalent of a fair share of the revenues as provided in the original contract of lease.

366 Q. How early had this definite understanding or agreement which you speak of been come to between you and the officers of the Central Transportation Company? I mean the understanding with them that the then fixed rental should end with

the expiration of the railroad contract, and that thereafter the rental should be a share of what could be earned under any new railroad contract that was to be made?

A. I think it was at the first formal meeting that we had on the subject after I had opened negotiations with Mr. Roberts.

Q. Was it before the expiration of the then current railroad contract?

A. Yes, sir.

Q. In the negotiations and discussions upon that subject was anything said about the power of the directors of the Central Transportation Company to make such a contract? If so, what was it?

A. I do not remember of anything having been said on that subject. It was provided by the lease itself and everybody acquiesced in it. I do not recollect of anything having been said on the subject.

Q. After that you had the negotiations, did you not, which culminated in the making of the written contract of the 27th of February, called the modified lease? What was the subject-matter of your subsequent negotiations after you had come to this conclusion and arrangement that you have spoken about?

A. The subject-matter was to ascertain an amount that would be the equivalent of a fair share of the revenue, and at all of our
367 meetings that was the chief topic of discussion, as the amount, as it appeared from the examination of the experts, who were at work on that subject, was small compared with an amount that the company had heretofore paid, and it seemed to be very difficult for the directors of the Central Transportation Company to realize that there could be so great a difference in the contract in the profits to be derived under the contracts, the old contract and the proposed new one.

Q. Then the subject-matter of all the subsequent negotiations was the ascertaining of what should go to the Central Transportation Company as their share?

A. Yes, sir. I explained to the directors the one item under the old contract; the Pennsylvania Railroad Company was to pay directly to the Pullman Company a sum equal to about $360,000 per annum, which, under the proposed new contract, they would not pay, and the directors understood it and often expressed themselves to me that they realized it was a difficult matter to make a contract with the Pennsylvania railroad out of which any considerable profit could be made, but urged me to continue on and do the best I could. I particularly remember Mr. Howard making that remark on several occasions.

Q. With whom of the directors of the Central Transportation Company did you have your communications?

A. With what I understood to be the Pullman committee. I think I received a formal notification that certain gentlemen, members of the board, including Mr. Howard, Mr. John A.
368 Wright, Mr. Lane, Mr. Wolverton, and, I think, one or two more, had been appointed a committee to negotiate with me in reference to the changed conditions of the contract.

Q. How often did you meet this committee? How many interviews did you have? Over how long a period of time did they continue?

A. A period of time, according to my recollection, of several months, and I should think from twenty-five to thirty or more interviews.

Q. Was there a disparity of view between you and the officers of the Central Transportation Company as to what would be a fair share of the earnings under the contract to be paid to the Central Transportation Company?

A. There was until the directors had fully informed themselves. At the beginning of the interviews they said that they thought their share ought to be perhaps $140,000, and they thought at other interviews subsequent to that that it would be considerable less, I think $110,000, and finally, after going into the subject exhaustively, they came to the conclusion that the amount fixed upon, to wit: $66,000, was a full share of the revenue, and made the proposition that if I would consent to pay that fixed sum and make an agreement for an exchange of stock, that is, to exchange the Pullman's stock for the stock of the Central Transportation Company, that they would settle the whole matter in that way.

Q. How did you come to be dealing with a specific sum instead of the proportion of the net earnings every quarter or half, or so on?

369 A. Because the terms of the proposed contract with the Central Transportation Company made it impracticable to fix actually the amount of revenue. The railroad company in its proposed contract reserved the right at any time to possess itself, by paying the appraised value of the cars, of three-fourths interest in the cars. That would so materially change it that it was regarded as quite impracticable to make any arrangement based upon the actual profits if any should be made.

Q. Did the Pullman Company prefer to have a fixed sum rather than a fluctuating one?

A. It seemed to be the desire of both companies to have a sum fixed because both companies had to deal with a large number of stockholders and they could explain one transaction and its reasons much better than they could explain the varying conditions of such a contract as we were obliged to make, if we made any at all, with the Pennsylvania railroad.

Q. What became of the purpose that you announced when you came here of annulling the lease? Was this arrangement to substitute such a rental, under the provisions of that eighth clause, substituted for that?

(Objected to as leading beyond hope of redemption.)
(Question withdrawn.)

Q. State what became, then, of the purpose you announced of annulling the lease.

A. The directors of the company met me in the spirit that I have

described of a desire to continue the arrangements and take
370 their chances with the stockholders of the Pullman Company in the results of such a contract as we could make with the Pennsylvania railroad, and it being definitely and thoroughly understood between all the parties present that the rental of $264,000 would cease with the then contract, I changed my purpose of annulling the lease, and continued my work in the best of faith and effort to make a contract that would be to the best interests of all parties concerned.

Q. By those you mean who?

A. The Pullman Company and the Central Transportation Company.

Q. The railroad contract expired on the 27th of January, 1885. You did not complete another railroad contract until some time after that, did you? You did not settle the terms of it, I mean definitely, with the railroad company?

A. No; the terms were not definitely settled. It was understood between myself and Mr. Roberts that whatever contract we finally agreed upon should date back to the period of expiration of the prior contract.

Q. What was your understanding with the directors of the Central Transportation Company as to the rental or compensation that was to be paid to them after that 27th of February, no contract having yet been completed?

A. The understanding—("understanding" objected to)—the understanding had been from the start that the rental, $264,000, would cease with the then contract.

Q. And after that?

371 A. After that we would agree upon a fair or proper share of the revenues under the new contract.

Q. Mr. Johnson objects to our use of the word "understanding." What do you mean by that word, as you used it?

A. Understanding, an agreement.

Q. That is the equivalent of it, in your mind?

A. Yes, sir, in my mind. The agreement in just the manner I have explained; the assurance on the part of the directors that that was the understanding; that the then rental would cease, and that they would be satisfied with their fair share of the best arrangements I could make with the Pennsylvania Railroad Company.

Q. In the modified lease, as it is called, that was afterwards made, there was a provision in connection with the payment of $66,000 for an exchange of stock. Explain how that came to be put in; what the reasons were?

A. Because, as it was stated to me, the terms of the Pennsylvania Railroad Company's contract being so indefinite and uncertain as to the future, it would be desirable to offer to the stockholders an opportunity to have a continuous permanent investment in exchange for what they then held.

Q. Do you remember at some time on or following the 18th of December, 1884, receiving for the Pullman Company from the

directors of the Central Transportation Company any notice of a resolution such as this:

"Resolved, That it is the opinion of this board that it is
372 prudent to agree with the Pullman's Palace Car Company on some reduction of the rental, in order to assist that company in the renewal of a contract with the Pennsylvania Railroad Company, and also prevent liquidation of this company in case of a non-renewal.

"Further resolved, That this board will accept a reduction of the rental payable by the Pullman's Palace Car Company under lease dated February 17, 1870, and will agree to reduce the same to $110,000 in lieu of the present sum of $264,000, to be paid to this company during the time of any contracts made between the Pullman's Palace Car Company and the Pennsylvania Railroad Company, and will recommend the acceptance of this reduction by our stockholders as soon as the Pullman's Palace Car Company agree thereto."

Q. Do you remember receiving notice of such a resolution?

A. I have some recollection, a strong impression, that I received such a communication, but I would not say positively.

Q. Do you remember, and can you state, what ones of the railroad contracts assigned to the Pullman Company by the Central Transportation Company, when the lease was first made, remained in force and operative after the expiration of the Pennsylvania Railroad contract of the 27th of January, 1885?

A. The record would show. My recollection is that the Cincinnati, Hamilton and Dayton. I am not prepared now to state.

Cross-examination.

By Mr. JOHNSON:

Q. Do I understand you as saying that a definite agreement was entered into between yourself and the Central Transporta-
373 tion Company to the effect that upon the termination of the lease by the Pennsylvania Railroad Company there should be no obligation whatever thereafter on the Pullman's Palace Car Company to pay to the Central Transportation Company $264,000 per annum? A definite, binding arrangement?

A. That was my understanding. Every director present, four or five or six, assured me that that was their understanding.

Q. And, therefore, from the time that was made you acted in all your subsequent negotiations upon an existing agreement which abolished the old rental and would oblige the Pullman's Palace Car Company to pay only what should be a fair share of what they should receive if they made a new lease?

A. Yes, sir.

Q. That, I suppose, you did in order that you might feel free to negotiate with the Pennsylvania Railroad Company?

A. Yes, sir.

Q. And after you had entered into that binding, explicit agreement, you felt no longer any anxiety as to being compelled to pay

more than what should be ascertained in the future to be a fair share of the rental?

A. I had no doubt while I was making these negotiations with the directors of the company that they would carry out the agreements that they made, and that they understood perfectly that the revenue to be derived under the new contract would not admit of the payment of $264,000, and that was a question that was
374 eliminated from my calculations after the first or second interview, when it was so stated.

Q. Therefore, there was no anxiety left in your mind as to the rental? That was gone?

A. I have explained that; that I believed they intended to carry out in good faith, and that the lease itself provided whatever provisions would prevent the payment of that sum.

Q. Which were you relying on, the agreement between the Pullman's Palace Car Company and the Central Transportation Company, clause 8, or the agreement which was entered into between yourself and the directors of the Central Transportation Company, abolishing the old rental, in all your negotiations?

A. I suppose I was relying upon all the conditions. The lease was there; the discussion and understanding with reference to its conditions were the same on the part of the Central Transportation Company as they were on my part.

Q. You were relying on both of those?

A. I assume so.

Q. Do I correctly understand you that you declined to enter into any negotiations with the Pennsylvania Railroad Company, unless first an agreement was made between yourself and the Central Transportation Company abolishing the old rental after the expiration of the lease with the Pennsylvania Railroad Company?

(Mr. ISHAM: I object to that question because the witness has not made, to my knowledge, any such statement.)

375 A. I declined to conclude any negotiations with the Pennsylvania Railroad Company unless we had so perfect an understanding with the Central Transportation Company as to their taking their share of what we would get from the Pennsylvania Railroad Company in full settlement, because I did not wish to involve myself. There was not profit enough in the proposed contract for me to involve myself in misunderstandings or litigations following, but there seemed to be no necessity for any such thing, as all our interviews tended in the direction of a fair understanding and agreement.

Q. After you had entered into that agreement, sometimes called understanding, sometimes agreement, we will call it agreement—after you had entered into that agreement there was no longer any obstacle, as far as the Central Transportation Company was concerned, to your negotiating to a conclusion your contract with the Pennsylvania Railroad Company?

A. Yes, sir. We had got to the agreement that I regarded as settled, that we would not be called upon to pay $264,000, but I did

regard it as especially important that the amount that we should pay should be ascertained, fixed, so as to avoid difficulty in the future. It was a complicated matter, and it was proper, in the first place, that it should be negotiated with the directors. I always understood, and had always been advised, that the directors were fully competent to do it, and thought that it was better to have the terms fixed and all settled before I was bound, or the Pullman's Palace Car Company was bound, by a long contract with the Pennsylvania Railroad Company.

376 Q. Were you unwilling to bind yourself with the Pennsylvania Railroad Company until two things had been done: first, this first agreement that you have spoken of, and, secondly, until another agreement had been entered into actually fixing the amount?

A. Yes, sir.

Q. Therefore, you were unwilling to enter into any arrangement, and you did not enter into any arrangement with the Pennsylvania Railroad Company until the amount that the Central Transportation Company was to get was fixed? Is that so?

A. Yes, sir; until they had agreed upon the equivalent of their revenue.

Q. Although it had been definitely agreed upon between yourself and the Central Transportation Company, that the old rental was at an end, and that nothing should be collected from you but what would be a fair share of any future rental, yet, still you were unwilling and did not make any contract with the Pennsylvania Railroad Company, until a binding agreement had been made as to the amount to be paid?

A. Until we had reached a settlement of the amount to be paid to them.

Q. So that, in point of fact, in the matter of concluding your negotiations with the Pennsylvania Railroad Company, the agreement that you have spoken of, the first agreement, was unimportant, inasmuch as you would not rely upon that to conclude your arrangement?

A. If there had been no negotiations entered into, or no
377 contract made with the Central Transportation Company, there would have been no $264,000, or any other sum, to pay the Central Transportation Company. That would have ended.

Q. But it was unimportant that there should have been an arrangement entered into that the old lease should be modified, and that there should be an agreement to take a fair share, because that was not sufficient to induce you to enter into a contract with the Pennsylvania Railroad Company?

A. That was one of the preliminaries to it. There was no disagreement from the start, the first interview I had with the directors, was to the effect that under the terms of the lease, the rental would not be $264,000.

Q. Let us know whether there were two parties to this agreement that you have spoken of? I call it the first agreement. Did the

Pullman's Palace Car Company bind itself positively that it would go on and negotiate a contract, and that if it obtained a satisfactory contract, to it, it would pay a fair share of the rental to the Central Transportation Company?

A. The Pullman's Palace Car Company, myself as its representative, was in almost constant negotiation with the Pennsylvania Railroad Company, submitting the results of its negotiations to the Central Transportation Company, and I supposed it to have been understood, by all that was going on, that we were desirous of making a contract with the Pennsylvania Railroad Company. Our interest was involved as well as the interest of the Central Transportation Company.

378 Q. But did the Pullman's Palace Car Company agree that it would pay a fair share of the rental which should be obtained?

A. I made that agreement a great many times—I made that statement that the Pullman's Palace Car Company was making the best contract it could, and would pay a full share of the net revenue to the Central Transportation Company.

Q. But did it agree that it would?

A. I made that statement to the directors.

Q. Did your company agree that it would pay a fair share?

A. Yes, sir.

Q. Then we had an agreement to this effect; an agreement entered into between the Pullman Company and the Central Transportation Company agreeing that the old rental should fall, that a fair share of the rental should be accepted by them and on the part of your company that they would pay a fair share of the rental, had you not?

A. That was it.

Q. Then why did you not go on and negotiate to an end the lease with the Pennsylvania Railroad Company after that agreement had been arrived at?

A. For the reasons that I have previously stated; that the question of a fair share of the rental would be an open and disturbing question by the peculiarities of the contract with the Pennsylvania Railroad Company.

Q. Your part of that contract was to this effect: that you would go on and endeavor to negotiate a satisfactory arrangement, and positively that you would pay a fair share?

379 A. I insisted that all this should be done previous to the contract with the Pennsylvania Railroad Company. I did not want to get into disagreement or difficulty with the Central Transportation Company. We had never had any difference, and I wanted to conclude the whole matter satisfactorily.

Q. Then there was another term to that agreement, which was that before you would conclude any arrangement with the Pennsylvania Railroad Company, not only was there to be a fair share of the rental accepted, but that the amount of that fair share should be positively agreed upon?

A. That was not so much stipulated by myself as it was appar-

ently the wish of everybody connected with the negotiation that there should be an amount; that that was the simplest and best way to fix it, so that I cannot say that I insisted upon it more than the others.

Q. You were not willing to conclude at all the arrangements with the Pennsylvania Railroad Company unless that term was arrived at?

A. For the reason that I wished every question between the Pullman Palace Car Company and the Central Transportation Company definitely settled.

Q. This fair share of the rental was not to be a fair share such as any court might afterwards determine it, but a fair share to be positively agreed upon before you would conclude with the Pennsylvania Railroad Company—agreed upon in the shape of a sum?

A. I was willing to take the fair share, and the estimate showed that I was giving that and more. For the reasons previously
380 stated, it was important to the Central Transportation Company, as well as to our company, that a definite sum should be fixed.

Q. It may have been desirable, but you have put it that it was to you absolutely essential that it should be fixed? That is so, is it not?

A. It was desirable, and I insisted. In fact, there was never any question that I remember as to the directors reaching this conclusion and agreeing to an arrangement. Previous to executing the contract we were all working to that end, and as we were arranging the proposition had been made for the exchange of stock and the necessary formula connected with that and putting it into an agreement, it came to a time when I was obliged to urge the execution of it in order to meet my negotiations with Mr. Roberts. What I would have done in case they had not carried that out, I am not prepared to say. It is not necessary.

Q. Did you agree with the Central Transportation Company that you would go on and endeavor to negotiate a lease of the Pennsylvania railroad and would make it provided the old rental was abolished and they agreed to accept a fair share of the rental in the future, even though before that lease with the Pennsylvania Railroad Company was made the fair share of the rental had not been fixed upon? That is the amount of that so-called share?

A. I do not think I went into the matters in that particular way.

Q. Did you agree in substance to that?

A. That I would make a contract on that basis?

Q. Yes; leaving it to be an open question what the amount would be.

381 A. I agreed that I would make a contract on that basis; that is, they said, "We want you to do this," and I went on. I do not know whether I made a definite agreement by words, but I went ahead to do this work and was doing it, and it was not necessary to stop every time we met to make formal agreements. We were meeting very often, and I was all the time uncertain up to the last long interview with the Pennsylvania Railroad Company di-

rectors whether I could make a contract at all. It was a very grave question. I was full of anxiety as to the result of such a contract, it was a contract so onerous to us. So that I do not remember of the positive agreements relative to this question of fixing the amount, but it was conceded on all hands it was desirable to fix the amount and we were working to that end.

Q. Was it not more than that? Was not everything you did agree upon with a qualification that unless the amount of that rental was definitely fixed you would not conclude a contract with the Pennsylvania Railroad Company?

A. I made that statement undoubtedly to the directors that I would not do it. My recollection about that is we had discussed this matter for months and I felt often impatient at the delays in getting this matter settled up as far as they were concerned, because I was dealing with a subject very important to their interests as well as to mine, with which I was having great difficulty, I often stated that I wanted to bring them to a realizing sense of the importance of action in this matter.

382 Q. Then may I take it as a fact or as your testimony, that no other agreement was ever arrived at preliminary to the paper 27th of February, 1885, which bound you to make a lease with the Pennsylvania Railroad Company upon satisfactory terms to yourself, though the Central Transportation Company was willing to receive a fair share of the rental, unless they agreed upon the amount that that rental should be?

Mr. ISHAM: I object to the question as putting into the mouth of the witness a statement which I did not understand him at any time to have made.

A. As I have stated before, no formal agreements were entered into. I felt that I was at liberty to make the contract with the Pennsylvania Railroad Company if my judgment satisfied me it was for the best interest of all concerned, and that the Central Transportation Company were bound by the lease itself, as well as their own agreement of their directors, that they would take a fair share of the revenue.

Q. Did you feel that anything had been done which deprived you of the liberty of refusing to make a contract with the Pennsylvania Railroad Company if the Central Transportation Company did not fix the exact amount that they would take in the future?

A. I did not consider that subject at all at the time.

Q. Did you not positively decline to make such a lease unless the directors did agree definitely upon the price to be paid in the future?

A. I did not decline to the Pennsylvania Railroad Com-
383 pany to make such a lease. I did not decline to make the contract with the Pennsylvania Railroad Company. I may have stated to the directors that I would decline—if they did not do their part I would not do mine. Something to that effect.

Q. Was not the part which they were to do to fix in dollars and cents the amount that their company would receive?

A. That was not a part of their agreement, the original agreement to take a fair share of the revenue. The agreement to fix the amount came along as a natural sequence as much by their request as mine, as the proper way to do it.

Q. But whose ever request it may have been, is it not a fact that you told them, the directors of the Central Transportation Company, that you would not make a contract with the Pennsylvania Railroad Company unless there was an agreement fixing the amount of rental which the Central Transportation Company in the future should receive?

A. In the course of the discussions to bring this to a head I very likely did. I think I did say I would not make the contract. I did not say that to the Pennsylvania Railroad Company.

Q. You would not have said that and you would not have taken that position if you had entered into any agreement which bound you to pay a fair share of the rental, though you could not fix the amount beforehand, would you?

A. I should have said what came in the discussion; if I felt that the directors, at the last moment, when I had got the con-
384 tract nearly concluded with the Pennsylvania Railroad Company, were still holding back and not carrying out their part, I would make an assertion of that kind probably in the heat of debate, if you please.

Q. The directors were cool, were they not?

A. I beg your pardon, we had some very heated debates, long continual interviews, and I became oftentimes very much excited myself by the indisposition on their part to carry out what I regarded as not only their agreements, but what was the true interest of their company, which, as I have explained before, I felt great interest in, as I had paid money direct to them for a good many years, and I desired to have the matters settled up so that it would be satisfactory to all parties concerned, and just to their stockholders as well as my own.

Q. You speak of "might" do that if they were not willing to do their part. What was their part? That is, what had they bound themselves to do? To fix in dollars and cents the amount?

A. They had said they would do that. They had coupled with it the proposition for an exchange of stock. I have previously explained that it was necessary that there should be an amount fixed in order for them to report properly to their own stockholders and to save an enormous amount of detail and accounting in the future conduct of the business.

Q. Let us go back. When do you say this agreement was made? Give us, as near as you can, the time of it.

A. I am unable to give definite dates. My best recollec-
385 tion is that this conversation occurred some months, perhaps three or four or five, before the expiration of the contract.

Q. It was after you had learned from Mr. Casatt what you have said?

A. Yes, sir, some time after that. A good while after that.

Q. Was it not as much as a year before the 27th of February, 1885?

A. My best recollection is that these interviews, and this one to which you allude, occurred in the summer of 1884. I remember some interviews when the weather was very hot.

Q. You testified in the first common-law suit in this case concerning the circumstances connected with this transaction. Did you, from the beginning to the end of your examination-in-chief, and of your cross-examination, allude in any way, shape, or form to any such agreement as you now have stated?

A. I have not read the testimony in the prior case; I will say this, however: that after that suit was tried my recollection was refreshed by an interview with Mr. Bacon, my counsel, as to the part that he took in the matter, the preparation of the memorandum that he had submitted to me with regard to canceling the lease, which he gave me, and then that he came on with me and Mr. Davie at that time. In my former testimony in the former suit that you speak of, that had escaped my recollection, so I presume I did not testify to that.

Q. You remember there was an injunction applied for; not the injunction in the present bill, but in a prior bill, do you not,
386 and that you made injunction affidavits in the case which Mr. Choate and Mr. Dickson argued?

A. Yes, sir.

Q. Did you allude to any such agreement in those affidavits?

A. That was prior to the trial of the suit, was it not?

Q. Yes.

A. I did not; probably for the same reason.

Q. Then you had lost sight of this thing which you now call an agreement?

A. I had lost sight of the preliminary steps that I took, and the instructions to my counsel. The reason for that, perhaps, is, that my counsel, Judge Lochrane, was ill and away from the country, and when this suit was brought new people were taken into it instead of the regular counsel of the company, and I, having a great many other things to think of and to do beside attending to this suit, would be the reason of the lapse of memory.

Q. Then there was a new theory introduced in the second suit—a new theory of defense?

A. I am not very clear about that.

Q. Did your memory of this thing come about the time that counsel was changed?

A. My memory of this came when I saw Mr. Bacon.

Q. About how long after the first common-law trial was that?

A. I cannot say. Not a very great while.

Q. Did Judge Lochrane have anything to do with that matter? Did Mr. Bacon act or consult at all with him?

387 A. I think that Judge Lochrane was not there. Otherwise, Mr. Bacon would not have come with me. Mr. Bacon was employed to assist Judge Lochrane on account of Judge Lochrane's

illness, and my recollection is that he was out of the country at the time.

Q. You remember Judge Lochrane attended that trial?

A. Yes, sir.

Q. Do you remember an offer that Mr. Bullitt made, or said that he was ready to make, of proving that you had exercised your option under the lease to cancel it?

A. No, I do not recollect it in detail.

Q. And that when he was challenged to say on what facts he relied, that he said he relied on the facts which had been given in evidence in the trial?

A. I do not remember of that.

Q. Let me read you your own testimony in this case. You are reported as having said:

"My recollection is that a meeting of the Central Transportation board was called at Mr. Lane's office for that afternoon, and that myself, and I think Mr. Atterbury and General Porter, went down to Mr. Lane's office with a view of seeing whether there was any question that the board might want to ask pending their discussion of it. We were ushered into the front office and remained there until the doors were opened and it was announced they had passed a resolution authorizing the modification, and I remember going in then to the back room and sitting down, and the question was brought up by somebody, I should think it was probably Mr. Lane,
asking if they could not insert a line to the effect that this
388 lease must be approved by the stockholders. We explained
that that would not answer my purpose; that I was obliged the next day, or the next day but one, the next day, I think, to give a definite answer to Mr. Roberts if I would or would not accept the terms of the contract which we had agreed upon. I could not do that without a positive contract with the Central Transportation Company, and explained at considerable length that I would get my company into a very peculiar position if there was a binding contract by which I should pay $264,000, and I was making a contract with another company by which I should only get $66,000, and then I depended upon the action of the company which held me for $264,000 to reduce that. I should very much rather let the Pennsylvania railroad run its own sleeping cars. I could not undertake to do it. I was, as I say, decided, and discussed that at some length. The result was that a contract was agreed to then and there, and was only, the signature of it—the execution and delivery, as I remember, was only delayed because the seal was not at Mr. Lane's office. The seal was at the office, I presume, of the treasurer of the company.

"Q. Was the paper there at the time?

"A. The paper, itself, was there.

"Q. It had been prepared by whom?

"A. Well, I am unable to state that.

"Q. What reason did you give specifically in connection with the Pennsylvania railroad why the paper should be concluded immediately?

"A. I said that Mr. Roberts was holding his report to the stockholders to announce the completion of this negotiation. It was generally known that the negotiation was going on, and I explained to the Central board that if this was an approval, and Mr. Roberts announced it as a fact accomplished, there would be no further question about it. If he, instead of that, was obliged to refer to it as something still in negotiation, the question of contract would be in doubt, might be objected to, and I thought that their interest
389 and ours, that is, the Central Transportation Company's interest and the Pullman Company's interest, would be better served if the matter was concluded. Knowing, as I did, that the amount of rental that I had agreed to pay was about all that could possibly be gotten from the operation of the Pennsylvania line, I was anxious to have this closed up. I had been negotiating this for a year and a half.

"By the COURT:

"Q. That is what you told them?
"A. Yes, sir."
Q. Do you remember that testimony?
A. Yes, sir.
Q. Have you any explanation to offer concerning your telling them about a binding contract then existing, and that being so, you would not enter into a contract with the Pennsylvania Railroad Company until some positive contract was made which released you?

(Objected to because the statement read is not that the witness told them there was a binding contract, but "if there was a binding contract.")

A. My feeling was that I wanted a document that was as formal as the original document, modifying and explaining it. The original lease was there and had got to be subject to all the explanations that are now being made with reference to it. I wanted it out of the way. I wanted it closed up so, as I have previously stated, to avoid complication and litigation in the future.
Q. Did you think when you said what I have read to you to that board of directors, that there was a binding contract to pay $264,000 interest?
A. No; I did not think so.
390 Q. Why did you refer to a binding contract?
A. If there was a binding contract.
Q. If there was no binding contract, why did you speak about it?
A. I cannot say just why I used all the language that I did at that time. I know it was at a time when I felt the responsibilities of the situation very greatly. I had to close this; I had to meet Mr. Roberts, and close what I regarded then as a doubtful contract. I was under heavy pressure, and I made use of expressions calculated to accomplish the object.
Q. But you know you were talking to men who, if there had been

an agreement which modified the contract, and made the rental no longer an existing one, knew all about it?

A. I knew perfectly well that the contract would not bind me to pay $264,000 for a term of years, but you must understand that from the start, from the first negotiation that was made, the directors of their own motion offered to aid me in every manner possible to make this contract, and to accept their share of it, and expressly said that the $264,000 was at an end. I wanted the contract itself, the written contract, at an end; that is, I wanted as formal a document on the one side as there was on the other. I wanted it out of the way.

Q. Do you put it that you used the language that you did to these men, you knowing that there was no subsisting contract to pay $264,000, to men who had agreed that there should not be any?

Q. If there was a binding contract, I said. I am unable
391 to say now, at this distance of time, just what was on my mind at that time, excepting the one thing that I know was on my mind, to be able to close the Pennsylvania Railroad contract, and to get this matter which had been a year and over in negotiation, settled up, and I made use of a great deal of language without very much thought, without much consideration, as a man in negotiating and discussing business questions, does not stop to measure his words at that time, as he would, if he was discussing a legal proposition.

Q. But if that contract of the 27th of February, had not been signed, you would not have executed the lease with the Pennsylvania railroad, would you?

A. If they did not sign that at the time, then that question would have been before me as to what position I could afford to take with the Pennsylvania Railroad Company under the circumstances.

Q. You had not then made up your mind whether you would or would not, make a contract with the Pennsylvania railroad, if the directors refused to execute this agreement?

A. I usually cross bridges when I come to them, and if they had not executed that agreement I should have taken more time to consider.

Q. I want now to get at your memory of your state of mind then. As you now remember your state of mind, would you or would you not have signed the agreement with the Pennsylvania Railroad
Company if the board of directors had either refused to sign
392 that contract of 27th of February, 1885, or had insisted upon putting in it a condition requiring submission to the stockholders?

A. I am unable to say what I would have done at that time.

Q. You know, by the by, of that resolution of the stockholders which has been referred to concerning submission to their approval during the whole of the negotiation?

A. How many years ago?

Q. In April, 1884.

A. It is my impression that I knew of it. I have heard a great deal about it since. I am unable to say definitely whether I did or not at that time.

Q. Do you remember your testifying at that trial the next morning:

"It is my recollection that some member of the committee, I cannot be positive, but I should think it was Mr. Lane, told me that their board had decided to offer the $66,000, to receive $66,000 per annum, and an option of exchange of stock, four shares of Central Transportation for one share of the Pullman; or two dollars' worth of stock for one dollar of Pullman: that they would have a meeting. I then said, 'It will be necessary to have this matter closed, a modified lease will have to be prepared and executed, because I must have that before I can involve myself in a contract with the Pennsylvania railroad.' I had stated that on almost every occasion, and I restated it then."

Do you remember that?

A. Yes, sir.

Q. Do you remember also saying:

"I then reiterated the reason why the modified lease would be of no avail if such a clause was in. The company could not conclude the contract with the Pennsylvania railroad with any qualification as to the modified agreement between the Pullman Company and the Central Transportation."

393

Do you remember that?

A. Yes, sir.

Q. Do you remember saying:

"I then explained to Mr. Bingham that I, acting as trustee for the Pullman Company and its stockholders, had made this contract with the Pennsylvania railroad based upon this modified agreement, and that I could not, in justice to the trust, give that up after I had placed the company for fifteen years under a contract with the Pennsylvania railroad."

Do you remember that?

A. Yes, sir.

Q. This agreement of the 27th of February, 1885, from the beginning to the end, you insisted upon as one that concluded the Central Transportation Company and measured the extent of its rights against your company?

A. The modified agreement?

Q. The agreement of 27th February, 1885.

A. Yes, sir; I considered the modified agreement was the settlement of the amount of revenue which they were entitled to.

Q. And limited the extent of their right against your company, and you set that up in the first proceeding, did you not, as a bar to any other right of the company against you in the shape of rental?

A. I do not know what was set up in the first suit, because I am not acquainted with it.

Q. Do you remember this:

"The fact is that having negotiated for more than a year, having had more than twenty-five meetings with this board of directors, having stated so many times, probably more than one hundred times, that it was a critical condition in the affairs of this company, and that the preservation of its property—the

394

Central Company's property—required that a contract should be executed with the Pennsylvania railroad in order that there would be some earning power in their property, that I could not agree to operate the cars on terms where I should have to pay the Central Transportation Company more than the cars would earn, and that with the full knowledge of that." Do you remember that?

A. Yes, sir; I remember that.

Q. Do you remember testifying on that occasion:

"I do not remember the question of resolution being brought up there. My mind was on the agreement—that the company had been for a year making an agreement, and we were talking about that agreement. They stated that the agreement had been ratified, and then said it ought to have been, or some one thought it ought to have been, qualified by requiring the stockholders' approval, and I explained why I could not accept that."

A. Yes, sir.

Q. Do you remember in re-examination being asked this:

"You made a statement as to a meeting that occurred between Mr. Bingham, Mr. Biddle, and yourself at the Windsor hotel? When was that meeting?

"A. That was about the 30th of March. I refreshed my recollection by the hotel register.

"Q. Without asking you to go through the whole conversation for, I think, you gave the substance of the conversation—if you did not I would like you to repeat, but I think you did; did you?

395 "A. My answer there would state that. I cannot recollect.

"Q. I would ask you to state in short, without going into all the reasons, all that occurred. What was the request that Mr. Bingham and Mr. Biddle made of you?

"A. That I should consent to cancel the modified lease that they had executed and delivered.

"Q. And the ground on which they asked it was what?

"A. That their stockholders—that they had had one meeting, I think—yes, a meeting of stockholders, and that they were endeavoring—some people among the stockholders were endeavoring to make trouble, and that they talked about personal liability of the directors and of the president; that it would be a great accommodation to Mr. Bingham if I would cancel that lease, and he thought there would be no difficulty then in getting the stockholders at the annual meeting to ratify a similar document, and my reply to them was as I stated in my previous answer."

Do you remember that?

A. Yes, sir.

Q. Do you recollect Mr. Bullitt on the trial making this offer in your presence:

"The defendant further offers to prove that by reason of the refusal of the railroad companies mentioned in the assigned contracts to permit the cars of the defendant to run over their respective lines of road the profits, income, and revenue derived from and under the only other and remaining railroad company mentioned

in the assigned contracts have fallen below the sum of $264,000, and the entire net revenue from the said remaining line or road is less than the sum of $66,000 per annum, and the defendant gave notice of its intention to declare the contract null and void and to surrender the demised property unless the rentals should be
396 reduced to a sum not more than $66,000, and of its election to pay such net revenue in lieu of the original rental."

Do you remember my saying then, "I have no objection to that," and the court said:

"The court will first require evidence of the election. If you choose, you can put in writing a statement of what you rely upon to prove the option, and the court will rule whether it is competent evidence to prove it or not."

And Mr. Bullitt then saying:

"Perhaps it will save time for the present to waive this point and go on upon another point, and we will be prepared in the morning, probably, to put it in a shape where it can be dealt with a little more intelligibly."

And do you remember the next morning Mr. Dickson saying:

"We now desire to renew our offer as made on pages 142 and 143 of the notes, stating that the evidence already in of what passed between the parties is the evidence of the election upon which we rely."

Q. Do you not remember that?

A. I do not remember any details of it.

Q. But do you not remember the substance of that?

A. I remember there was discussion, but I could not remember the point of the discussion.

Q. Do you remember on that occasion, when the challenge was given to produce evidence of any statement on the part of your company that it had exercised its option, of your then suggesting to counsel the testimony that you have given today?

A. As I explained, the testimony I have given today is the
397 result of my memory being refreshed by seeing my assistant counsel, Mr. Bacon, who came with me and with the auditor at one of our first meetings with the Central Transportation Company, and who prepared the formal notice of our desire to annul the contract—a memorandum of it, which I had with me. This had passed my recollection at that time.

Q. In your examination-in-chief you were asked to give a narrative of what occurred as follows:

"How often, say between the 1st of July, 1883, down to the 28th of February, 1885, did you come to Philadelphia for the purpose of seeing the directors and officers of the Central Transportation Company on this business?

"A. Oh, I should say from twenty-five to thirty-five times, probably.

"Q. Have you had the register of the Continental searched to see how often you could find you had been there?

"A. Yes, sir.

"Q. How often?

"A. Well, I think that shows about twenty-five or thirty times. I do not remember. It is not less than that.

"Q. What, of the directors of the Central Transportation Company did you usually hold your interviews with when you came on?

"A. I think the committee called the Pullman committee, as it was known to me, composed of Mr. John A. Wright, Mr. Lane, Mr. Howard, Mr. Bingham, I think, and Mr. Wolverton. That is my best recollection. I may not state all, and possibly I may be mistaken as to the names of some that I mentioned.

"Q. At those interviews what was the specific subject of discussion between you and them?

"A. I commenced by explaining to the committee the situation as I understood it, with regard to our future relations to the railroad committee.

398 "Q. To the Pennsylvania railroad?

"A. The Pennsylvania Railroad Company. I advised them that Mr. Cassatt had notified me, or stated to me rather, in his office, that it was the intention of the Pennsylvania railroad at the expiration of the present contract to operate its own sleeping cars; that they should not renew the contract with this company. That was some two years and a half, perhaps, or three years.

"Q. Would not renew this contract that lapsed on the 27th of January, 1885?

"A. Yes, sir; the contract which lapsed at that time; one of the contracts which lapsed. And later I stated to them that Mr. Roberts, after having taken pains to ascertain, after having gotten reports from the principal officers of his road as to the advisability of renewing the contract, or operating sleeping cars on their own account, had consented to a negotiation with me, at which he stated that it was simply a question whether the road would operate its own cars or recontract with the Pullman Company; that there was no question of any other new company coming between us, and as to that, that it was a question of dollars and cents; that he could find the money on a five per cent. car trust and build their own sleeping cars, have the advantage of building new and improved cars, and that in any event, whatever they might do about sleeping cars, the road had fully decided to operate its own parlor cars. I stated these facts to this committee and I explained to them at the same time that under the existing contract, the then existing contract, the railroad company was paying the Pullman Company about $400,000 per annum mileage, or the amount that it was assumed to cost to maintain the bodies and trucks of the cars, as the original contract made fifteen years ago provided that the railroad should do; that I was pretty well satisfied that Mr. Roberts would not make a new contract and pay any mileage; that therefore the net revenue resulting to the Pullman Company under any new contract that could be made probably would be decreased by at

399 least that amount, and therefore it was apparent to everybody that we could not make any contract or consent to continue on the lines of the Pennsylvania railroad with the then existing lease between the Pullman Company and the Central Transpor-

tation Company. I was asked, I remember, by Mr. Howard, and I happened to remember his speaking particularly, perhaps because he was not connected with the Pennsylvania railroad, to go on and get the best I could: 'Go on and get the best contract out of George Roberts you can, and we will help you all we can.' And as I made further progress—I would explain that I came here often upon appointments with Mr. Roberts to negotiate with him, and at the same time I made appointments with the committee of the Central Transportation Company, so that I could report progress and advise with them, and I devoted a great deal of time towards the latter part of 1884—I find by the hotel register that I was here two or three times a week, sometimes stayed here two days—and at all those times, or nearly all those times, I had joint engagements with the Central Transportation Company and with Mr. Roberts. We began finally at a number of interviews with Mr. Roberts to get the conditions of a new contract in print, and I discussed those conditions, or submitted them to this committee, and then brought up the question of what would be a fair and equitable arrangement between the Pullman Company and the Central Transportation Company; that whether the lease should be modified to meet the very great reduction there that absolutely would be the result of a new contract, such a one as Mr. Roberts would make, or whether an exchange of stock could be made, and those propositions and suggestions were discussed by the hour. I suppose during those twenty or thirty interviews, lasting all the way from two to six hours, sometimes far into the night. And various propositions were made by the committee of the Central Transportation Company. The first one that I remember was that
400 they would receive $144,000 a year instead of $264,000. I showed them by the figures, by the earnings of the cars under the old contract and the great reduction in earnings by the new contract, that that would be impracticable. Then afterwards there were propositions made, I think, $120,000 a year. Then again, at a later interview, or perhaps the same one, $110,000, and I could simply reiterate and show the statement that there was not that amount of money in it, after we had paid our expenses there would not be that amount of money to pay over. Then I suggested to the committee that they take up the matter with Mr. Goodman, the superintendent, with whom they were acquainted, to go to his office, and get at the definite facts and figures, and satisfy themselves that those were the earnings of the company, that the statements were correct according to the general figures I had made—the detailed figures. And finally I remember as the time approached, the expiration of this contract, that Mr. Roberts—that we had got the contract to a point that he was satisfied with, and it remained for me to say whether I would accept it on those terms. I notice by the hotel register that I was here almost continuously for several days prior to that time. That at a meeting of not only the committee, but perhaps some others—I remember there was quite a full meeting of the Central Transportation Company people—it seemed absolutely necessary that we should come to an understanding be-

cause I had stated to them in all of these meetings and in every conversation that I had, that it would be impossible, it would be impracticable for me to make a contract with the Pennsylvania Railroad Company, by which I should agree to operate the cars on the terms that they proposed for fifteen years, with a contract in existence binding me to pay four times as much as I would get. That was so obvious that I only spoke of it when it seemed to be necessary, when it was necessary for me to impress upon the minds of the directors that some action must be taken, or we were
401 in danger of losing the opportunity to make the contract with the Pennsylvania railroad. On the last week, I think I remember, the question came up in our discussion as to the value of the cars, suppose they were surrendered. We were discussing every phase of the question. Suppose we did not make the contract with the Pennsylvania railroad, and these cars should be surrendered, what would they be worth? and upon that question there was quite a difference of opinion. Mr. John A. Wright at that time did the most of the talking. He made some figures. We simply came to a deadlock as to the value of these cars, and I suggested that we leave that to some party that we both had confidence in to express an opinion not binding upon either of us, but we could get the opinion of a man that might guide us, and in that connection we agreed upon Robert Harris, the president of the North Pacific railroad, and we both telegraphed—at least I telegraphed—and I presume Mr. Wright did. At any rate Mr. Harris came, and we had a long evening session with him. I have a memorandum now in my pocket in Mr. Wright's handwriting which says, the committee will recommend the board of directors to accept $66,000, with option of exchanging the stock, seven shares of transportation stock for two of Pullman, or they will recommend the board of directors to take $88,000 per annum, without the option to exchange stock. That memorandum, as I say, appears to be in Mr. Wright's handwriting that I now have.

"Q. State, if you please, what occurred in the later interviews in reference to the execution of this agreement, and particularly what occurred in reference to anything that was said as to the delivery or non-delivery of this paper with reference to the action of the stockholders.

"A. We got at this meeting that I speak of, which I think was the 25th or 26th.

"Q. Of what month?

"A. Of February—Mr. Wright's written memorandum or
402 proposition, and then the next morning—it is my recollection that some member of the committee, I cannot be positive, but I should think it was Mr. Lane, told me that their board had decided to offer the $66,000, to receive $66,000 per annum and an option of exchange of stock, four shares of Central Transportation for one share of Pullman, or two dollars' worth of stock for one dollar of Pullman; that they would have a meeting. I then said: 'It will be necessary to have this matter closed, a modified lease will have to be prepared and executed, because I must have that before

I can involve myself in a contract with the Pennsylvania railroad.' I had stated that on almost every occasion."

Q. In all your statements of the negotiation that took place, do you notice that you never once alluded to the fact that you were trying to get at a fair share of the rentals?

A. That I never alluded to the fact that we were? It was a fact that we were trying to reach what the rental was that the Central Transportation Company would be entitled to. The proposition to annul the contract that I have referred to today in my testimony was brought to my mind after the testimony that you have read, by the interview with Mr. Bacon, who was with me, and the memorandum that he made at my direction previous to that time, when it became necessary to take up this matter some time after my first interview with Mr. Roberts. That had escaped my mind entirely at the time I testified on the previous suit, but on seeing the memorandum it brought it all back to my mind, and brought back to my mind what was said with reference to the $264,000, that the amount would not be claimed, as I have already stated.

403 Q. Do you not think that that fact had also escaped your mind when you were talking to the directors of the Central Transportation Company on the 27th of February, 1885, and insisting upon the agreement that was then prepared being executed?

A. Just what was on my mind all the time at all the conversations at which I was urging them to complete this arrangement as to the amount, I am unable now to say.

Q. Let us come back to this agreement. Did you ever give any formal written notice of the intention of your company to annul the lease?

A. I do not recollect sending any notice. I have seen the notice prepared by Mr. Bacon, and which I had with me, and I probably read the notice to the directors, or stated the substance of it, at the time of our first meeting with Mr. Bacon and Mr. Davie.

Q. Was that notice in pursuance of a resolution of the board of directors of the Pullman Company?

A. No; it was in pursuance of my direction to the counsel to take this matter up and take the necessary steps in view of the probability of not making a contract satisfactorily with the Pennsylvania Railroad Company.

Q. You say you read it, or think it may have been read, or it may have been shown. Are you positive of that fact? Do you merely think it may have been done?

A. I feel positive of the fact that I either read it or stated it.

Q. Who was present when that was done?

404 A. Mr. Bacon and Mr. Davie, the auditor of our company, and I would not say positively as to the directors. I have a recollection of Mr. Howard being present and Mr. Lane, and I think there were three or four more. I think the Pullman committee, or a portion of it.

Q. It was the Pullman committee, you think, or some members?

A. Oh, I recollect distinctly those two gentlemen.

Q. Was it a meeting of the board of directors assembled, or was it a meeting of this committee that you had been talking with?

A. It was a meeting of the Pullman committee, I presume.

Q. Tell us what occurred, as well as you recall it?

A. I stated to these gentlemen the situation as it then existed; my interview with Mr. Roberts, and that the contract, or rather, that any contract that I could probably make with him would not pay a profit to the Pullman Company and allow the payment of any sum to the Central Transportation Company, and, therefore, there was but one course left for us, to cancel the contract, and that I had had the papers or notice prepared. My impression is that I stated that verbally and did not read it. It was met immediately by, I think, Mr. Howard's stating that they did not want the Pullman Company to give up the contract; they wanted it to go on and make the best contract it could with the Pennsylvania railroad and they would help them, and they would accept their share
405 of the results of it. In the course of the interview the $264,000 was mentioned a number of times; that that amount would end, of course, with the present contract. Mr. Howard said that he understood very well that the Pennsylvania Railroad Company would not make a new contract that would allow the Pullman Company or any company to pay $264,000, and, therefore, that would not be claimed or considered after this contract had expired. I am stating now not the language, but the general tenor, the substance of my recollection.

Q. I want, as far as your memory can give it, the substance of all that was said on that occasion?

A. There was a great deal said. Our interviews were usually several hours long.

Q. I am speaking of this interview?

A. This interview was, in my mind, among the first interviews that we had, if not the first.

Q. Have you now given, as far as you can recall it, the substance of that interview, of what was said on this subject?

A. All that I recollect at the moment.

Q. When you spoke of an agreement and understanding, sometimes one, sometimes the other, have you referred to what took place then on that occasion?

A. I have referred to the expressed wish of the directors, that the Pullman Company should not cancel the lease, but should go on and make a new contract.

Q. When you spoke of an agreement and understanding, that is what you referred to?

A. Yes, sir.

406 Q. Their wish that you should go on and try to negotiate with the Pennsylvania Railroad Company?

A. Yes, sir.

Q. Do you recollect any other interview in which this subject was discussed?

A. What subject?

Q. About the canceling the old $264,000, and agreeing to take a

fair share. Was it at that interview that that was done, or was it at other interviews?

A. The interviews subsequent to that were altogether upon what we could do—what the fair share of the revenue would be, and what it would probably be, and to fix an amount, they insisting on getting as great an amount as the estimated amount as possible.

Q. So that when you speak of an agreement arrived at, you mean what was done at this interview which you have just detailed as well as you can?

A. Yes, sir.

Q. And the other interviews were trying to fix what should be the amount to be paid in the future?

A. Yes, sir.

Q. Was ever anything said about a percentage—what percentage of the future earnings should be paid?

A. No, I think not. I said at the outset that I would be willing to pay all the net revenue, all that the books would show the net revenue would be over and above our usual charge of interest and depreciation.

407 Q. Then what you were telling them you were willing to do was to allow the whole of the net rental, after deduction of, I hardly gather exactly what?

A. After deducting what we deduct in our business, the interest upon capital and the depreciation of the cars.

Q. You did not mean to charge them interest upon their own capital, of course?

A. Interest upon capital we had put in.

Q. Your additional capital?

A. Yes, sir.

Q. That is what you stated to them as your idea of a fair share of the rental?

A. I think I stated all the time I was willing to give them more than a fair share of the rental.

Q. Not after they agreed to take a fair share?

A. I was willing to put it at the maximum. I wanted to make the arrangement, and I was willing to make a very liberal arrangement with them, and the figures that they investigated thoroughly showed that I was correct in that, and that the amount of $66,000, as I recollect it now, was a little more than $1,000, or $2,000, perhaps, more than the books showed the proper amount to be.

Q. Then why was it, concerning a business necessarily changeable in its volume, liable to increase, probably to decrease, in the future, that you were insisting upon a fixed amount in dollars and cents instead of making an agreement that you would give them the net revenue?

408 A. Because of the difficulty of reaching that, and in view of the changing conditions of the contract, the necessity of taking up the subject and going all over it so many times, which was very desirable to avoid. Then my personal feeling was that the stockholders of the Central Transportation Company would,

upon getting better acquainted with the whole system, upon becoming better acquainted with the whole subject-matter, gradually change their holdings from Central Transportation Company to Pullman Company, and thus continue their interest, and this accounting be done away with.

Q. Necessarily, this business was a business uncertain as to its gross revenues, was it not? The business that would be done with the Pennsylvania railroad?

A. All business in the future is uncertain to an extent.

Q. At no time was it suggested that if business turned out better than was expected a larger revenue should be paid?

A. This was suggested to meet that, the exchange of stock would cover all that. If the business turned out better than the figures at that time showed, and, of course, we took the chances of their turning out worse, because if the Pennsylvania Railroad Company availed itself of the option and took the cars at the appraised value that would have resulted in an immediate considerable loss, the proposition to exchange the stock would equalize or would meet the case of a higher revenue or profit.

Q. Was that so? Because, if it should turn out to be much more profitable than was estimated upon, then the increase would
409 have gone, if it was given to the Central Transportation Company, altogether to it; whereas, if they had to exchange stock they would only get a *pro rate* of it, would they not—such a *pro rate* as their holding should bear to the share of Pullman stock?

A. That is uncertain. The value of the Pullman stock would be increased, as subsequent events have proved. The stock at the time this was being negotiated was selling at $112 or $113 or $114, and has since advanced largely. Central Transportation stock had not the elements of permanency in it, which depended upon such contracts as this, while the Pullman Company's stock was much more valuable on account of its permanency.

Q. Have you ever made any estimate or calculation of the advantage derivable by the Pullman Company generally from a contract such as this with the Pennsylvania Railroad Company, apart from the direct profit earned on the Pennsylvania Railroad system itself?

A. The Pennsylvania Railroad Company contract was the result of an application to me from the president of that company, and I assumed, and subsequent events have confirmed me in the opinion, that it was quite as much to the advantage of that company to have Pullman cars as it was to the Pullman Company to operate the line. The Pullman was then operating the Western lines, the Union Pacific, and it had a very large influence upon the travel, and the Pennsylvania Railroad officials were notified by their agents in California that if they wanted to secure California travel east from Chi-
410 cago they must get Pullman cars; the people over there did not know any other cars. Mr. Scott, then president of the company, called upon me subsequently and proposed to make a contract with the Pullman Company, provided we made some arrangements with the Central Transportation Company. Their cars, he

said were not satisfactory, the business was not being done satisfactorily, and negotiation was commenced then in August and was concluded, I think, in January following.

Q. You have answered as to the advantage to the Pennsylvania Railroad Company, but my question was as to the advantage to the Pullman Company?

A. I have never made any estimate of that—any thorough estimate. I do not know any basis upon which an estimate in dollars and cents could be made.

Q. Is there not a very great incidental advantage to the Pullman Company in being able to transport passengers in its cars from distant points or going to distant points over the Pennsylvania Railroad system?

A. We have several other lines reaching these points. We reached New York by the Erie and by the Delaware and Lackawanna. By those two lines we have our lines into New York, and we have altogether about 80,000 miles of line over which our cars run, while the Pennsylvania Railroad system is about 6,000 miles.

(Question repeated.)

A. If there was no advantage in the contract with the
411 Pennsylvania railroad, the contract would not exist. That would apply to the Pennsylvania Railroad Company as well as to all other railroad companies. The offset to that now is that the contract is a very close one, very exacting and burdensome to the company, and it has got a clause in it by which it may be canceled at such short period that it does not give the company anything like the advantage or value that it would if it was a permanent contract for fifteen years as the original one was. We do not know that we will be operating the Pennsylvania railroad two years hence.

Q. What figures did you give to the directors of the Central Transportation Company as the profit to your company from the Central Transportation Company's contract under the old lease?

A. I gave them no figures myself, as I do not go into figures.

Q. You doubtless saw the figures that were given?

A. The exact manner in which that was done was by Mr. Goodman, the superintendent, and Mr. Davie, the auditor, and Mr. Cotringer and one or two other gentlemen connected with the Central Transportation Company in a room by themselves, an adjoining room to the one in which we were negotiating, going over the figures, and Mr. Cotringer, I remember, reported, as he was familiar with the sleeping-car business, that those figures were in his view correct, and that was the opinion of all of them. They were satisfied that the figures that they then got were correct figures, and I was satisfied in the same way.

412 Q. I am desirous myself of finding out something about the correctness, and in order to get at it I would like to know what the figures were. What amount as stated, if any, by yourself or by your officers to the directors of the Central Transportation Company as being the profits of the old contract?

A. I am quite unable to give you the details or figures that were stated at the time.

Q. The former directors of the Central Transportation Company, who have been called on behalf of your company, have stated that they arrived at $66,000, by deducting from the original profits certain sums which were lost, like the mileage matter. I am very desirous of knowing what was the sum from which the deduction was made. You are unable to give me any information upon the subject?

A. I cannot give you information in detail.

Q. The gross would be sufficient; the gross amount which was stated to the directors of the Central Transportation Company as being the annual profit or the average annual profit of the old contract.

A. I am quite unable to give you the gross or net amount from my recollection.

Q. Could you approximate within a hundred thousand dollars per annum, to the figure that was stated to them?

A. I do not think I could. The figures can be reached.

Q. The figures I want to reach, are the figures which were put before this board of the Central Transportation Company.

413 A. I think it is quite practicable to reach those figures, but I have not the amount in my mind. It is impossible for me to carry such detail in my head.

Q. At the time of the expiration of the contract with the Pennsylvania Railroad Company, were you then running any of the old cars of the Central Transportation Company, or were they all out of use?

A. My impression is that very few, if any, of the one hundred and nineteen cars leased, were in active service at that time.

Redirect examination by Mr. ISHAM:

Q. Mr. Johnson has read you a good deal of your testimony given in a former suit at law, and you were asked in various ways why you did not give the testimony in that case that you have given here. Do you remember what the issue in that case was—what it was about?

A. No.

Q. Do you not remember that in that case the Pullman Company were standing on the validity and obligation of the modified lease of February, 1885, and claiming that that was binding on the Central Transportation Company? That is —, is it not?

(Objected to as leading.)

A. Yes, sir; that is so. I remember that.

Q. Was not the question in that case, whether that modified lease as it stood, was obligatory or not?

A. Yes, sir.

414 Q. If that modified lease had been held obligatory and valid, and binding on the Central Transportation Company,

would the subject-matter of this testimony now have been of any consequence?

(Objected to as leading.)

A. No; I should think not.

Q. Then it had nothing to do with the issue in that case. Were you by any counsel in the case interrogated and questioned as to the subject-matter about which you have testified today?

A. No, sir.

Q. If there was anything of that kind brought forward by you, it came incidentally and upon the basis of the facts and information which was just lying in your mind without direct inquiry about it. Is that so?

(Objected to as leading.)

A. Yes, sir.

Q. Among the passages that Mr. Johnson read to you (page 40 of the printed copy of the bill of exceptions in that case), you say:

"Therefore, the net revenue resulting to the Pullman Company under any new contract that could be made probably would be decreased by at least that amount"—referring to the mileage. "And, therefore, it was apparent to everybody that we could not make any contract or consent to continue on the same lines of the Pennsylvania railroad with the then existing lease between the Pullman Company and the Central Transportation Company."

Is that or not a substantial statement of the fact there of your statement to them that in that state of affairs that lease must be canceled?

415 (Objected to; first, as leading; and secondly, because by no earthly process of deduction can such a result be reached.)

A. That is, with the mileage out, that we could not continue our lines on the Pennsylvania railroad.

Q. With the contract in existence?

A. With the contract in existence was clear. Nobody questioned it. The board of the Central Transportation Company did not assume that we could, but, on the contrary, they very well understood that we could not afford to pay $264,000.

Q. Is not that a statement then in the testimony put in by you that you told these people at that time that under the then apparent condition of a new contract, you could not continue to run the road with the lease in existence?

(Objected to as being still more leading, after the witness has failed to respond affirmatively to the first leading question.)

A. I think that is a statement to that effect.

Q. On the next page of the printed copy of the bill of exceptions (page 41), in the passage read to you by Mr. Johnson, is this:

"I showed them by the figures, by the earnings of the cars under the old contract and the great reduction in earnings by the new contract, that that would be impracticable. Then afterwards there

were propositions made, I think, of $120,000 a year. Then, again, at a later interview, or perhaps, the same one, $110,000, and I could simply reiterate and show the statement that there was not that amount of money in it. After we had paid our expenses there would not be that amount of money to pay over. Then I suggested
416 to the committee that they take up the matter with Mr. Goodman, the superintendent, with whom they were acquainted, and go to his office and get at the definite facts and figures and satisfy themselves that those were the earnings of the company; that the statements were correct figures according to the figures I had made."

What was the subject that you were discussing with them at the time these various items and sums were mentioned?

A. We were discussing what share of revenue, if any, should come to the Central Transportation Company under this proposed contract.

Q. Then, so far as any questions that were directed to you by counsel, or so far as any issues involved in that case, were concerned, and even further, you did state then, yourself, the substance of the testimony that you have delivered here today, did you not?

(Objected to; first, as leading; and secondly, because the fact is not as counsel put it.)

A. I did.

Q. In the passage on page 43 on the printed bill of exceptions, which has been read to you, you stated as follows:

"I would get my company into a very peculiar position if there was a binding contract by which I should pay $264,000, and I was making a contract with another company by which I should only get $66,000."

You stated in answer to that, that what you were wanting from the company was a formal lease and extinguishment of that old provision of the lease as formal as itself. What were you
417 referring to; what document, what instrument were you referring to, when you said if there was a binding contract? Were you giving an opinion upon the effect of that contract as it stood, or were you referring to the written instrument itself, or what did you mean by the use of that word "contract," at that place?

I will ask you the same question as to what you referred to in the other passage which Mr. Johnson read to you where at the bottom of page 41 of the same printed bill you said:

"It would be impracticable for me to make a contract with the Pennsylvania Railroad Company by which I should agree to operate the cars for fifteen years, with a contract in existence binding me to pay four times as much as I would get."

Did you mean by that a statement that there was such a contract legally binding you to pay that, or what did you refer to by the word "contract"?

A. I referred to this document that existed, and that I felt required something on record to modify it; that is, the contract itself had not been settled; it was not determined by this contract what

share of the net revenue should be paid, and it left it, as I have heretofore explained, in an unsettled condition, and I did not intend to give an opinion on the binding nature of the contract, but what I had in mind all the time was to reach a definite settlement, and I wanted the directors on the record with a memorandum that was evidence of what we agreed to stand as against the original contract.

Q. Then, while the original lease stood in formal form you had the transaction which had occurred before the Pennsylvania
418 contract had expired and their agreement concurring in what had been there agreed, but it was not in any formal shape, not in writing, and you wanted that put into equally formal form with the other document? Is that what you mean to say?

A. That is exactly what I mean. It would have left it in an entirely unsatisfactory condition for me without some record agreed upon, but we had reached the conclusions that our verbal interviews led to.

Q. You came to an understanding and agreement with these parties that the latter clause of section 8, as we know it in this case, should govern the future rental of the company, and that that being agreed upon, you would endeavor to get a suitable contract with the railroad company?

(Objected to as leading.)

Your attention was called to a passage in the testimony in the other case in which you said in effect that you would not make a contract with the Pennsylvania Railroad Company unless the amount to be paid was fixed, these statements being made after the modified lease had been put in form and when its execution was being discussed. Had you, or had you not, made with the Pennsylvania Railroad Company the best contract that you could make?

A. Yes, sir.

Q. Your statement was in effect that unless they would determine the amount to be paid, you would not make that contract?

A. Yes, sir.

Q. Is it, or is it not, true that a contract might have been
419 made with the Pennsylvania Railroad Company, if they would agree to make it, such that you would have been willing to accept it, even if the annual amount that the Central Transportation Company should receive were not fixed?

A. Yes, sir.

Q. But that present contract which the Pennsylvania Railroad Company then proposed was not such a one?

A. Was not such a one as I could make without that amount being definitely fixed.

Q. Your statement then was an expression of your state of mind that you would not make that contract with the chance of having that subject to go all over again?

A. As I stated before, I felt that way when I was making these statements. The question of whether I should have made the contract or not would have come up later.

Recross-examination by Mr. JOHNSON:

Q. Was the contract with the Pennsylvania railroad which you had in your mind when the paper of the 27th of February, 1885, was before you, the best contract for the Pullman Company you could get out of the Pennsylvania Railroad Company?

A. Yes, sir; it was the best that I would have been able to do.

Q. Would you have made a worse contract with the Pennsylvania Railroad Company than that?

A. No; I would not.

Q. Did you at any time ask the directors of the Central
420 Transportation Company to put in writing the agreement which, under the circumstances you have stated, you arrived at, canceling the old rental?

A. No; that subject was not alluded to to my recollection after the first one or two interviews. That matter seemed to have been settled, and, as I previously stated, we were discussing what the amount to be paid should be and what other possible arrangement could be made that would be for the interest of both companies; such as an exchange of stock, or anything else that might be desirable to do.

Q. On the occasion of your first testimony did you, or did you not, attempt to give the substance of all your negotiations and agreements with the Central Transportation Company and its directors?

A I attempted to give what I recollected at the time, and all that I recollected.

Q. As fully as you could the whole substance of everything you attempted to give?

A. As fully as I could with my recollection at the time.

By Mr. ISHAM:

Q. You intended to give all that you understood the parties interrogating you called for?

A. Yes, sir; I intended to answer the questions that were propounded to me as fully as I could.

By Mr. JOHNSON:

Q. Did they interrogate you to give part or the whole of the substance of your agreements and negotiations?

A. There were various interrogations; some of them called for full explanations, and in some cases I remember being shut off.

421 Q. You were holding back nothing?

A. I was not holding back anything, that I recollect, that the questions called for.

Q. Did you not think that you had really stated the substance of all your agreements and understandings with the Central Transportation Company?

A. My mind naturally was influenced by the questions that were propounded to me, and I was endeavoring to recollect at that distance of time, as well as I could, to answer the questions correctly.

I have got information since that time, as I have previously stated, from Mr. Bacon, that I had at this time quite forgotten.

GEO. M. PULLMAN.

Adjourned until Saturday, November 19, 1887, at 11 o'clock a. m.

422 SATURDAY, *November* 19, 1887—11 a. m.

Present: Samuel Bell, Esq. (examiner); Messrs. Burry, Dickson and Isham, for complainants; John J. Johnson, Esq., for defendants.

JOB H. JACKSON, having been duly sworn, was examined as follows:

By Mr. BURRY:

Q. Please state your name, residence and occupation.

A. My name is Job H. Jackson; residence, Wilmington, Delaware; age, fifty-five; occupation, manufacturer of railroad cars principally.

Q. Are you connected with the Jackson and Sharp Manufacturing Company?

A. Yes, as president.

Q. How long have you been president?

A. Since 1870. I have always been the owner of the Jackson and Sharp Company.

Q. Have you had much experience in building different kinds of railroad cars?

A. I have had twenty-five years' experience, lacking three months.

Q. What kind of cars?

A. All kinds—freight, passenger, parlor, sleeping, baggage, mail and street cars.

Q. For what companies have you built sleeping cars?

A. For the Pullman Company, the Wagner, the Woodruff, the Mann Boudoir Company, and the Layton sleeper.

Q. Have you repaired sleeping cars for all these companies?

423 A. For the majority of them.

Q. Are you acquainted with the cost of building and repairing sleeping cars?

A. I am.

Q. Did you ever own any sleeping cars?

A. No, not a direct owner. I have been interested in them, but not as an owner.

Q. If sleeping cars have put upon them all necessary repairs from time to time, so as to be kept in what might be called good running order, such running order as one railroad demands that other railroads shall keep its cars in traveling on their roads, do such sleeping cars ultimately wear out, or are they laid aside?

A. I am aware that there have been cars that have worn out.

Q. And that have been condemned as unfit for service?

A. Yes; I know of cases of that kind.

Q. Do you know cases of that kind in regard to sleeping cars whether they have been condemned as unfit for service?

A. Yes; I have four in my yard now, condemned as unfit for service. I would like to modify that. They have been condemned for service by the sleeping car company who sold to us, with the hope that we might turn them over to traveling showmen, or something in that way.

Q. If you were the owner of sleeping cars in use, and desired to keep up the equipment from time to time, as the cars might be retired as unsafe or unfit for service, what amount reckoned on
424 percentage of cost of the car would you set aside from year to year as a sinking or surplus fund, or a depreciation fund?

(Objected to as irrelevant.)

A. Without knowing the figures from actual estimate, for I have never made such, my general impression would be that if I were an owner of such equipment I would feel unsafe in my investment if I did not set aside somewhere near ten per cent. of the first cost of the car to cover for its replacement. That of course would be providing it had not been kept in repair at somebody else's expense.

Q. In allowing that much to be set aside from time to time you would, however, consider that the car would be kept in the ordinary repair in which such cars are ordinarily kept by railroad and other companies?

A. Yes; and then I would still wish to set aside a sinking fund for its replacement.

Q. A sinking fund of about ten per cent. that you have just mentioned?

A. That would in a measure depend upon how well that car was kept up. If it was kept up well, I think perhaps a less sum than ten per cent. would do.

Q. What would you put as a minimum, it having been kept in good repair?

(Objected to as irrelevant.)

A. Not less than five per cent.

Q. What would you put as a maximum?

A. Somewhere between five and ten, I suppose; seven and a half.

425 Q. What do you think would be a fair average of all the sleeping cars of all the different companies that you know of, taking into account the way in which they have been usually repaired in the past, so far as you know?

(Objected to, because the witness has not shown that he has kept any figures from which to make such an estimate.)

A. I hardly think I am competent to answer that question intelligently, from the very fact that I am not familiar with a sufficient number of cars to do so.

Cross-examination.

By Mr. JOHNSON:

Q. There are not statistics anywhere of the life of cars, and the time of wearing out, and all that which would enable you to state an average therefrom, are there?

A. I do not know of such statistics, and suppose there are none.

Q. Therefore, of course, this question of a percentage is, to a certain extent, a new one to you, when you are asked to reduce the matter to an actual percentage, is it not? that is, you have a general idea, of course, of the subject in general experience; but your experience and your duties have never obliged you to reduce the thing to a percentage in the shape of actual figures?

A. Not in actual experience; but it is not a new question to me—the general subject.

Q. But it is new in the sense of reducing the matter to a fixed percentage?

A. I have never reduced it to a fixed percentage by actual figures.

Q. You have given your best judgment, but not one that
426 you could verify by reference to figures upon which it was founded?

A. Well, I am not so sure of that; because I have enough records in my office to make a very intelligent calculation on such work.

Q. Could you give us those figures from which you give your testimony—could you produce them to us?

A. I think I could; I can tell you a good deal in a general way.

Q. If you have records in the shape of car A, for instance, when it was put in use, and when it went out of use, and any history of that car to show that it was not subjected to accident, I would like you to furnish me such information?

A. I would be unable to furnish such a history of cars. I could in several instances give dates of the building of the cars, and then of their rebuilding by our company; but their history between those two times I would perhaps have absolutely no knowledg- of whatever.

Q. And whether that rebuilding was necessitated by an accident, a collision, a smash-up, or something of that sort, you would not be able to tell?

A. All that we have ever repaired, with one exception, have been ordinary wear without accident.

Q. You have spoken of four particular cars which you had in your shop that had been condemned for use in the ordinary sleeping-car business, and which you might have a market for in some other way, as show-cars or something like that; whose cars were those, originally?

427 A. Woodruff sleeping cars.

Q. How old are those cars?

A. I cannot say, positively, but I think about twelve years; from the date of their building, until the date of their return to our shops.

Q. They had partly become obsolete in fashion, as well as depreciated in actual condition, hadn't they?

A. That is true; yes, sir.

Q. Wasn't their being thrown out of the sleeping-car service quite as much because of an improved car being introduced as because of their having been worn out?

A. I should suppose in the case to which I refer that it was about equal.

Q. They are a car that could be safely run as a passenger car, are they not; but they are not up to the exigencies of the sleeping-car business in its best style?

A. No, they would have to be rebuilt to even make them for what I suggested in my answer a few moments ago.

Q. They would have to be even rebuilt to make them that sort of a car?

A. Yes, sir.

Q. When you speak of rebuilding, at about what cost do you mean—not as to exact figures, but as a general idea?

A. To make the cars to which I refer even salable for the purposes that I indicated, I would have to put perhaps not less than $3,000 upon each of them.

Q. What ought they to be worth when that outlay was made?

428 A. I quoted for them, with such an outlay, $5,000. I made a quotation yesterday for those very cars at $5,000 after being rebuilt.

Q. So that the present worth of the cars you would put at $2,000, unrepaired?

A. I put them at what I have stated in that estimate. I would be glad to sell them today for $1,000.

Q. What was the original cost of those cars?

A. About $11,000.

Q. You have spoken about setting aside a certain sinking fund, even doing a certain amount of the repairing from time to time to cars. Have you any idea what the total outlay for repairing upon those cars had been from the time of their introduction into use—the four cars that you refer to?

A. I have no knowledge. They were never back in my works during those ten or twelve years.

Q. If there had been any considerable repairs put upon them, would it have been done at your works?

A. Not necessarily.

Q. Do you know that any considerable outlays had been made upon them?

A. I think there were not; except beyond the general keeping up of such equipments.

Q. In speaking of setting apart a sinking fund of from five to ten per cent., you have also said, and put the ordinary repairs of the car upon them besides. What average percentage of repairs per annum did you have in your mind?

A. I do not think I had any. I know that the companies
429 when they are running keep up the ordinary wear and tear, as it is termed, all the time.

Q. What would you, from your experience, say would be a fair percentage to represent that necessary keeping up of the car from time to time? What would be a fair percentage of cost per annum; five per cent.?

A. Do you mean to keep the ordinary sleeping car now up in repair constantly? No. I was going to say it was not enough; but I should think it would be enough. They are generally overhauled about every three years, or something like that. That would likely do it.

Q. So that in fixing the estimate of a sinking fund, as a prudent owner, you would want to set aside to provide for replacement from five to ten per cent.; and you had in your mind not only the setting apart of that sinking fund, but keeping up the cars to the proper standard by an outlay of perhaps five per cent. per annum on the cost?

A. No; I meant that I, as an owner of one car, say, run upon any road in this country, and getting my dividend regularly, would consider that at least five per cent. of that must be laid away for a sinking fund for the other destruction or want of use of that car to replace it.

Q. But in addition to that as the owner, if you were doing your own repairs, would you calculate to expend per annum in keeping the car in proper condition, up to the requirements of the sleeping-car system, about five per cent., or not as much? I mean additional?

A. I am hardly prepared to answer that question, for I have never followed any given car up.

430 Q. State your best judgment. Would it be as much as five per cent. yearly outlay?

A. Not for the first three or five years; but after that it would.

Q. For the first three or five years it would probably run without the requirement of any outlay sufficient to make a percentage of cost, but after that it would require about five per cent. a year?

A. No; if the car as turned out by the builder was kept up faithfully by the railroad companies for, say, three or four years, there would not be any greater outlay on its rebuilding during that time, except the ordinary wear and tear, but after that the percentage increased quite rapidly.

Q. Suppose you were the owner of a car and attended to it altogether yourself, state what you, as a prudent owner, would consider would be your outlay if you had to do all the repairing of your car; that is, what would be a fair percentage of cost to count upon as outlay in repairing it and keeping it up, in addition to the putting aside of a sinking fund to meet the purchase of a new car at a certain time?

A. That is a question that I am not able to answer, not having

the management of these cars or a railroad. I have not that information at my command.

Q. You have sufficient experience to give us a judgment upon it, have you not?

A. No; there is the wear and tear of trucks and wheels that I have no data for.

Q. Still you built the wheels and the trucks?

A. Yes; I am only anxious to give correct answers in this
431 case. I am not interested in any way in the suit, and do not care. I have no data, and have never kept an account of such repairs.

Q. Still, would you not have some judgment from your experience in the construction of cars, knowing how things last? Could you not give us a judgment as to what percentage of cost would represent to an owner who had to do ordinary repairing and keep up his cars, the outlay that would be required?

A. I do not know sufficient about that to give such an answer as I would desire to give.

Q. It would not exceed ten per cent., would it?

A. I should think not.

Redirect examination by Mr. BURRY:

Q. You have said that as a prudent owner you would set aside from five to ten per cent. per annum of the original cost of the car, as a replacement or depreciation fund. In addition to that, in order to keep the car going it is necessary to put on the ordinary running repairs to wheels, trucks, bodies of cars, and also once in two or three years to shop them for extraordinary repairs. What do you think would be the percentage on the value of the car, that would do the last two items, the ordinary running repairs and the extraordinary shop repairs, per annum, during the life of the car?

(Objected to; first, because the question is leading; second, because it contains statements of fact not made by the witness; and third, because it is irrelevant.)

A. I think I said a moment ago that I could not answer that question.

432 Q. Then am I to understand, as Mr. Johnson implied in his last question, that you think five per cent. would do those last two items?

Mr. JOHNSON: Mr. Johnson has implied nothing of the sort in his question, but stated that he put ten per cent. to the witness.

Mr. BURRY: Mr. Johnson tried very hard to get the witness to say five per cent.

Mr. JOHNSON: Mr. Johnson suggests that Mr. Burry shall confine himself to his duty, and make no comment on what Mr. Johnson does. If he does so it will perhaps not lead to any very great promotion of the progress of the case.

Mr. BURRY: Mr. Burry would suggest that he knows much better than Mr. Johnson how to conduct his case.

Mr. JOHNSON: Mr. Burry may know how to conduct his case, but if he does he is not displaying his knowledge in what he is doing.

The WITNESS: I do not think five per cent. would do it.

Signature waived.

433 HORACE PORTER, having been duly sworn, was examined as follows:

By Mr. ISHAM: You are a resident of New York, and vice-president of the Pullman Palace Car Company?

A. I am.

Q. How long have you been such?

A. Fifteen years.

Q. You are familiar with the lease made in this case, between the Central Transportation Company and the Pullman Company?

A. I am quite familiar with it.

Q. And also with the Pennsylvania Railroad contract which expired January 27, 1885?

A. I am, yes.

Q. Do your relations as vice-president of that company lead you to an active participation in its business affairs, negotiations and contracts?

A. Yes.

Q. Coming down to the time when the Pennsylvania Railroad contract in force up to January, 1885, was running, as the time for its expiration approached, did any occurrence arise about the probability of the making of a new contract or a renewal of that one? And if so, what?

A. For some time before the expiration of our contract with the Pennsylvania Railroad Company it was definitely learned by us that that company had decided not to renew our contract. This was a matter of a good deal of moment to us. Not only on account of our relations with the Pennsylvania Railroad Company,

434 but on account of our relations with the Central Transportation Company.

Q. If they would not renew that contract as it stood, what probabilities were there, so far as you were informed, as to the making of another and new contract in place of it?

A. When we first learned this, we could form no conjecture as to what they would do. The only thing we learned in the earlier stages was that they had determined not to renew our contract, and that for the future they would either run their own cars or make some new contract with us, if they could do so on terms which they deemed practically as satisfactory as running their own cars.

Q. Did the Pullman Palace Car Company give any special consideration as to what their course of procedure would be in that case, with reference to the lease; and did you make any communications to the Central Transportation Company on that subject? If so, what were they generally?

A. Mr. Pullman and I considered the matter very seriously, and

we decided that some action would have to be taken by us, under the eighth clause of the lease with the Central Transportation Company, with a view of terminating the rental of $264,000 after the termination of the Pennsylvania contract. We decided that we would give notice. That we ought to give reasonable notice to the Central Transportation Company that we would terminate the lease and surrender the property to them as of the date of the expiration of the Pennsylvania contract.

(Objected to.)

435 Q. Did you make any such communication as that to them? If so, what was the result, how was it proceeded with, and what took place?

A. Yes. Mr. Bacon, assistant general counsel of the Pullman Company, was directed to draw up a notice to this effect. He did so, and in the month of May, 1884, as nearly as I can recollect, a meeting was held with the committee appointed by the Central Transportation Company to confer with the representatives of the Pullman Company on this subject. The committee consisted of Mr. Lane as chairman, Mr. Bingham, Mr. Wright, Mr. Howard, and perhaps Mr. Wolverton, but I am not certain as to him. This led to a number of meetings with this committee, and the committee was notified that the Pullman Company had decided that the lease should be terminated, and the property surrendered. Whether the notice that had been drawn up by Mr. Bacon was delivered to them I cannot recollect. It was either shown to them, or the substance of it communicated to them. I cannot recollect whether it was delivered to them.

Q. Did you communicate to the Central Transportation Company what the Pennsylvania Railroad Company had communicated to you on the subject of renewing or making a new contract?

A. Yes; we gave them all the information in our possession.

Q. What reasons did the Pennsylvania Railroad Company assign as objections to making a new contract with the Pullman Company?

436 A. They stated that they could run the sleeping cars themselves more profitably than they had been operated under our contract. That they could procure money at five per cent. to equip their road with palace cars, and they thought they ought not to make any arrangement which would allow the Pullman Company more than that. But they did recognize certain advantages from contracting with the Pullman Company; such as the fact that the Pullman Company had contracts with many other railway lines which would facilitate the running of through cars in connection with the Pennsylvania railroad and other lines; and the fact that the Pullman Company had a large number of cars, so that they could throw in a large additional equipment to provide for sudden emergencies of travel over the Pennsylvania lines, and other considerations.

It was afterwards stated by officers of the Pennsylvania Railroad Company that they would at least not make a contract that would

allow the Pullman Company to make more than six per cent. on the cost of the cars which it might provide. We communicated all those facts to the committee of the Central Transportation Company.

Q. State how your proposition to cancel the lease was received, and what occurred on that subject?

(Objected to as irrelevant.)

A. The members of the committee were unanimous in expressions of regret at our taking this course; namely, terminating the lease and surrendering the cars. The- argued very strenuously that it would be disadvantageous to both our companies, and urged that we try to make the best terms we could with the Pennsylvania
437 Railroad Company for the future, and that they would be willing to take a share of the net revenues derived therefrom.

Q. Take it how?

A. That they would be willing to receive a share of the net revenues.

Q. Received for what?

A. Mr. Pullman said that there must first be a distinct understanding and agreement that the $264,000 rental should cease at the termination of the Pennsylvania contract, and this was distinctly agreed to verbally. It was agreed to take a share of the net revenues in lieu of the former rental of $264,000.

Q. How did they get onto the idea? Where did the idea come from of substituting the share of the net earnings for the old fixed rental?

A. Under the eighth clause of the contract of lease it was provided that in the contingency of the falling off of the revenue below——

Q. (Interrupting). It was from the provision of the lease that you got that idea?

A. It was from that provision of the lease that this idea arose.

Q. Did you enter into negotiations upon that subject? Was there any understanding or agreement come to? And if so, what was it?

A. What was uppermost in our minds representing the Pullman Company was the adoption of means that would absolutely terminate the rental of $264,000 after the expiration of the then existing contract with the Pennsylvania Railroad Company. To have continued that would have been a calamity to the company.

438 Q. What did the officers of the Central Transportation Company propose that you should do?

A. They agreed fully that this old rental should cease at that time, at the expiration of the Pennsylvania Railroad contract, and that if we would go on and make the best contract we could with the Pennsylvania Railroad Company they would accept as rental a share of the net revenues derived from such contract.

Q. Who came to Philadelphia at the time you and Mr. Pullman came for the purpose of announcing your intention to annul the

Central Transportation Company lease? Besides yourself and Mr. Pullman, were there any others?

A. We had so many interviews with them that I can hardly identify the particular interviews.

Q. Did Mr. Bacon come with you?

A. Mr. Bacon at one time was there.

Q. And Mr. Davy?

A. Mr. Davy, the auditor, was there on a number of occasions.

Q. Do you remember why Mr. Davy came; why he was brought down?

A. He was brought there in order to give facts and figures in regard to the business.

Q. With whom did your interviews and discussions on the subjects that you have mentioned occur?

A. With the committee of the Central Transportation Company directors. Generally there were present Mr. Lane, the chairman, and Mr. Bingham and Mr. Wright and Mr. Howard.

Q. You mean the committee that has been sometimes spoken of here as the Pullman committee?

439 A. Yes; the Pullman committee of the board of directors of the Central Transportation Company.

Q. Was any question made at that time of the power of the directors of the Central Transportation Company to come to the understandings and agreements with you that you have mentioned?

A. That question did not arise because we considered that they were simply carrying out the provisions of the lease.

Q. And after those conclusions had been reached, and this agreement and understanding settled, that you were to go on and get the best contract you could with the Pennsylvania Railroad Company, and proceed under the last clause of section 8, and substitute the rental on the earnings basis for the other, did you have further negotiations subsequently as to the amount of that rental? If so, state what they were?

A. The next step after that was to take up the negotiations with the Pennsylvania Railroad Company in furtherance of our agreement to do so. These began in the fall. The interviews were numerous and protracted; and the officers of the Pullman Company used their best possible endeavors to get better terms than they finally got in making a new contract. Along some time in the fall of 1884, it was discovered what the ultimatum of the Pennsylvania Railroad Company was, and the draft of the new contract was prepared and printed, and galley proofs corrected from time to time. Some twenty-three proofs were made, I think, involving changes from time to time. When we got along that far, we had

440 further meetings with the Pullman committee of the board of the Central Transportation Company, and these drafts of the contract were submitted to them, and all the provisions discussed at great length.

Q. In view of these arrangements that you had come to with the Central Transportation Company, what was done by you with reference to your original purpose to annul the lease?

A. At the urgent request of the Pullman committee of the Central Transportation Company board, we abandoned the idea then of terminating the contract, and surrendering the cars; and went to work to carry out the agreement to make a new contract in the best terms we could, with the intention of giving the Central Transportation Company a share of the net revenues derived therefrom.

Q. Do you remember a clause in the Central Transportation Company lease that in any case of seeking a renewal or making new contracts, the officers of the Central Transportation Company should give such help as they could?

A. I do.

Q. Was there any discussion of that clause at the time?

A. That was referred to when they urged us to make the best contract we could with the Pennsylvania Railroad Company, and they said that they would use their best offices in aiding us in making this contract.

Q. Was anything known on the subject of whether or not the Pennsylvania road would at that time make a contract with
441 the Central Transportation Company anyhow, if it did not with the Pullman Company?

A. It was distinctly stated to us that they, the Pennsylvania Railroad Company, had no intention of making a contract with the Central Transportation Company, nor with any other sleeping car company that they mentioned; but that they would either run their own cars, or contract with us.

Q. Was there anything said in the course of your discussion, that you remember, by the directors of the Central Transportation Company, indicating their ideas as to the possibilities of their making a contract with the Pennsylvania Railroad Company in any contingency?

A. I never heard them express the idea that they could or that they would attempt to make a contract.

Q. Of the railroad contracts that were assigned by the Central Transportation Company's lease to the Pullman Company, how many remained in force and operation at the expiration of the Pennsylvania contract in January, 1885?

A. I think there was not more than one. The Cincinnati, Hamilton and Dayton. There may have been possibly some other small road. That expired within a year.

Q. The Pennsylvania Railroad contract was substantially the last one of importance?

A. Yes, sir.

Q. What proportion did the possible earnings from the remaining contracts bear to the old fixed rental of $264,000 a year?

A. They were utterly insignificant compared with that.

442 Q. After you had come to the understandings that you have mentioned with the Central Transportation Company to substitute rental on an earnings basis for the old fixed rental, what was the subject-matter of all your subsequent negotiations with the Central Transportation Company?

A. Our first negotiation was to see whether they acquiesced in the terms laid down in the draft of the proposed contract with the Pennsylvania Railroad Company, and these terms were approved by them.

Q. Did they relate also to the amount of the share of the revenues that should go to the Central Transportation Company? If so, state what negotiations you had on that subject.

A. Of course we could not enter upon the question as to what the share of revenue which should properly go to the Central Transportation Company would be, until we determined the conditions upon which we could make a new contract with the Pennsylvania Railroad Company. As soon as we had determined definitely the best contract we could get, and had really in this respect got the ultimatum of the Pennsylv-nia Railroad Company, negotiations were taken up with the Pullman committee of the Central Transportation Company board with reference to several matters which were brought up by the conditions of the new Pennsylvania Railroad contract proposed. That contract, I might state, provided, amongst other things, for the right on the part of the Pennsylvania Railroad Company to terminate it at certain intervals. It
443 gave them the right also to participate in the revenues by purchasing a portion of the equipment.

Q. Is the contract that you are now speaking of the one that was ultimately executed, and is an exhibit to this case?

A. It is the contract as finally executed.

Q. The one under which the Pullman Company is now running?

A. Yes. It was thus evident that the revenue to be derived from this contract might change in certain contingencies; and that these contingencies would lead to the reduction of that revenue; and we could see nothing leading to an increase of it in the future, except an increase in the profitable business performed. The committee of the Central Transportation Company directors expressed a desire to swap an uncertainty for a certainty by means of procuring an option from the Pullman Company to allow the stockholders of the Central Transportation Company to exchange their stock for Pullman stock on the basis of $2 par value of their stock for $1 par value of Pullman stock. Other suggestions were made by them, and it was proposed to embody these in a written agreement; and now that we knew the exact terms of the new contract with the Pennsylvania Railroad Company, it was suggested that the proportion of the revenue to be paid to the Central Transportation Company should be arrived at and stated in this written agreement. It was deemed advisable by both parties to do this; and they went to work to ascertain what a fair share of this revenue to be paid
444 to the Central Transportation Company would be, with a view of seeing whether they could not decide upon it—state it in the written agreement.

Q. Was it proposed to put it at any fixed sum? Was that the idea?

A. They proposed to put it—the rental thereafter—at a fixed sum. The Pullman Company, to get at a basis for this, said it

would be willing to give to the Central Transportation people substantially all the net revenue derived from this Pennsylvania contract after deducting the usual operating expenses, the depreciation upon cars, and the interest upon the additional equipment furnished by the Pullman Company to perform the business.

The Pullman committee was then given access to any papers in the hands of the auditor and superintendent of the Central division, Mr. Goodman, whose office was in Philadelphia, under whose supervision the Central Transportation Company cars were operated, and they went into this at great length.

Q. The object of all these negotiations and investigations was to arrive at what?

A. It was to arrive at what share of the net revenue derived from the Pennsylvania contract should be paid to the Central Transportation Company.

Q. And to make some estimate by which that could be put at some fixed sum?

A. At some fixed sum, as stated in the written agreement, which it was proposed to enter into.

Q. These negotiations culminated at last, did they, in a modified lease which was made—the paper which was called the modified lease?

445 A. Yes; in which it was fixed at $66,000; that was executed on the part of the Central Transportation Company.

Q. That sum was arrived at as representing a share of the earnings probable, under the Pennsylvania Railroad contract?

(Objected to as leading.)

A. It was; yes, sir.

Q. Why was the provision for the exchange of stock put into the modified lease?

A. I have already briefly explained that. There were a great many contingencies under the provisions of the contract with the Pennsylvania Railroad Company, which might change the revenues in the future to go to the Central Transportation Company; and they regarded Pullman stock as a better permanent investment; and were given an option to exchange their stock for Pullman Company stock, in proportion as stated by me heretofore.

Cross-examination by Mr. JOHNSON:

Q. Do you remember in the issue at common law, which was tried in this court, this question being asked you:

"Q. When did you first come to Philadelphia in reference to the negotiations between the Pullman Palace Car Company and the Central Transportation Company?

"A. At least two years before the making of the modified lease.

"Q. What was your object? I do not ask you to state what occurred, but just state what your purpose was in coming?

"A. It was to consult with the officers or directors of the
446 Central Transportation Company, in view of the fact that the Pennsylvania contract was to expire soon, and that some

arrangements should be made with the Central Transportation Company previous to that expiration."

Do you remember that?

A. That is correct. We had informal talks with them.

Q. Do you also remember this:

"Q. How often did you come to Philadelphia for that purpose, between that time and the latter end of February, 1885?

"A. Well, I should say thirty times at least.

"Q. Were you with Mr. Pullman during the interviews that he had with the Central Transportation Company directors, as a general thing?

"A. I was present, generally—possibly at all the interviews."

A. That is correct; yes, sir.

Q. When did you say it was, during that period of two years, that this conversation occurred, which has been put to you in questions, as an agreement or understanding about a cancellation of the old rental?

A. I understood that I was asked by Mr. Isham particularly about an interview, in which the formal notice was given to the Pullman Company in regard to the cancellation of the lease; but I will say in answer to your question, that previous to that I had been with Mr. Pullman several times, and had had interviews with the (Central) company, and with different individuals.

Q. There is a period of about two years covered there, however. I want to know in what part of that period it was that this
447 particular interview with the committee took place in which occurred what you have testified to?

A. That occurred, as near as I can recollect, in May, 1884—that formal interview.

Q. Do you remember in your former testimony being asked in chief:

"Q. Will you state what your recollection is of the conversations between Mr. Pullman and the directors of the Central Transportation Company upon the question of the necessity of having a defined contract with the Central Transportation Company before making a contract with the Pennsylvania railroad?"

Do you remember a question substantially like that put to you?

A. I do not recall it.

Q. Assuming that such a question was put to you and that the record will show, did you, during the whole course of your testimony, in the most remote way, mention any such conversation or interview or agreement or understanding, as you have testified to today?

A. Do you mean in regard to our demand that the rent should be reduced below $264,000?

Q. I do.

A. Well, not unless such question was asked. I presume it would not be asked, because we were discussing then a specific agreement in which the rental was made $66,000.

Q. Pardon me. If the record shows that this question was put:

"Will you state what your recollection is of the conversations between Mr. Pullman and the directors of the Central Trans-
448 portation Company upon the question of the necessity of having a defined contract with the Central Transportation Company before making a contract with the Pennsylvania railroad?"

you would take that as asking you to testify to any defined contract between the two companies on the subject, wouldn't you?

A. Well, yes.

Q. If such a question was put to you, or whether it was put to you or not, do you remember as a fact that in any way you alluded to what you have testified to today?

A. I do not know that I did.

Q. If the record shows that you did not in any way, shape or form, allude to such an interview, or to such an agreement, or to such an understanding, how do you explain the fact that, if such a question as I have read was put to you, you did not then refer to it?

A. I very naturally would not refer to it because it would not be a prominent matter in my mind.

At this point, Mr. Isham suggests that the testimony quoted by Mr. Johnson should be shown to the witness.

Mr. Johnson stated that he had no objection whatever to the witness running his eye over his whole testimony in said case in order that he might answer more fully Mr. Johnson's question as to whether he did or not allude to this interview, agreement or understanding.

Mr. Johnson further stated that he had not heretofore been furnished with a printed copy of the testimony.

(Printed copy of testimony handed witness.)

449 The WITNESS: It would not be a prominent matter, in my mind, the stopping of the rental of $264,000, because we were dealing upon a modified lease, which afterwards fixed the rental at $66,000.

Q. Then this matter, at the time that you were testifying, whatever importance may now attach to it, was not one in your mind as of any importance—not of sufficient importance to state?

A. I do not recollect the testimony that I gave, whether I mentioned it or not.

Q. Let me read what you said in reply to a question which I find on the record exactly in the words I have stated:

"Mr. Pullman told them, at the outset, in these interviews, that he had reason to believe that it would be a very difficult thing to renew the contract with the Pennsylvania Railroad Company in consequence of statements which had been made to him by officers of that railroad company. He had no hope of making a contract on terms anything like so good as the terms of the old contract, and that in view of the provisions in the original lease, providing for some modification in the terms of that lease consequent upon a reduction of revenue, that it would be absolutely necessary to come

to some arrangement with the Central Transportation Company before he could come to terms with the Pennsylvania Railroad Company in regard to a new contract."

When you were answering as you did there, why is it that you did not then go on to state that in pursuance of that suggestion of Mr. Pullman there was an agreement arrived at to reduce the revenue to what should be a fair share of the future rental?

450 A. I think I stated in that testimony exactly that that was the basis that we were working on—the reduction of the rental to make it a fair share of the revenue.

Q. Is it not your recollection that you then stated in your testimony that what you were endeavoring to do up to the time of the agreement of the 27th of February, 1885, was to agree upon a fixed sum to be paid in future by the Pullman Company?

A. It is. I have stated heretofore we did endeavor to fix that sum.

Q. Did you in any way suggest in your testimony that there had been two agreements made; first, an agreement to cancel the old lease, and to take only a fair share of the future rental; and secondly, an agreement fixing in figures an amount to be paid in the future embodied in the written paper of the 27th of February, 1885?

A. I do not recollect the exact testimony, but I intended to state just the condition of things.

Q. Then your case is not like that of Mr. Pullman—one of suspended recollection until after the trial of the common-law issue, vivified and brought into life by an interview with Mr. Bacon?

A. No, my recollection has been refreshed from looking over the memoranda that had been drawn up at that time by Mr. Bacon.

Q. But still it was a recollection which was all the time, even when you were testifying in court, present in your mind to a certain extent?

A. Oh, yes, I was perfectly aware of it.

Q. To what extent did Mr. Bacon's memoranda give additional volume and force and strength to your recollection?

451 A. In recalling the formal manner of giving notice to the Pullman committee of the Central Transportation Company board in regard to the termination of the contract and surrendering the cars, and then their urgency that, in lieu of that, rental should cease and a new rental begin, which should be a share of the net revenue.

Q. Then did you have a recollection, when you were testifying before the jury at common law, of the fact of a notice having been given of an intention to cancel?

A. I knew it at the time.

Q. Having in your mind a recollection of that fact, you did not state it to the jury at that time?

A. I was not asked that question. If I had been, it would have recalled it, I have no doubt.

Q. But if you were asked a question to this effect:

"Will you state what your recollection is of the conversations

between Mr. Pullman and the directors of the Central Transportation Company upon the question of the necessity of having a defined contract with the Central Transportation Company before making a contract with the Pennsylvania Railroad Company?"

Your attention was probably directed by a question to the necessity of stating anything which occurred concerning a defined contract?

A. I, of course, did not attempt to recite all the details of the numerous conversations with that committee—that I would not attempt.

Q. But you have testified today that there were two agreements, and your testimony has principally been addressed to the first of these agreements. Now you take it that that was a defined
452 contract. When you answered to Mr. Isham's question that there was an agreement and that there was an understanding, in your stating that there was an agreement and an understanding, you meant to imply that there had been a defined contract did you not?

A. Certainly, a defined contract. There was an understanding or agreement to that effect.

Q. Then why, even if you did not think it was necessary in replying to the question that I have read to you, to state all the details of the interviews, did you neglect to speak of a defined contract when the question was pointedly addressed to that end?

A. I supposed it was all inferred in my testimony.

Q. Is it not the fact that, until after the trial of the action at common law—until after the arguments at which you were present when Mr. Choate and Mr. Dickson argued in favor of the first injunction, you did not have in your mind as a matter of any importance in the past any such agreement or understanding as you have testified to today?

A. I was perfectly aware of the fact.

Q. But did you have it in your mind as a matter that had any importance attaching to it, because (let me finish my question) if you did have it in your mind as a matter having any importance attaching to it, why, in the injunction affidavit which was made, as well as in the testimony which you gave, did you omit to refer to it?

A. It was referred to, but perhaps indirectly, there in the statement that a modified agreement was that the rental was reduced to $66,000.

453 Q. Be kind enough to turn to the printed record which Mr. Isham will let you have, and show me wherein in the whole course of your testimony you, in the most remote way, alluded to this agreement and understanding. If you will kindly refer to the page; we will put it upon the notes of testimony.

A. I state my recollection that it was referred to indirectly.

Q. Still it would be more satisfactory to point to the place itself, so that we may get exactly what you refer to.

A. I do not recollect its being stated directly.

Q. Let us now come back to this thing which is sometimes put as an understanding, and sometimes as a positive agreement, and some-

times takes shape as a defined contract. It was with a committee of the board of directors of the Central Transportation Company that this conversation occurred?

A. Yes, sir.

Q. You knew that that was a committee appointed to negotiate, did you not?

A. Yes, sir.

Q. You knew it was a committee which had no power to bind the board of directors?

A. On the contrary, they told us that they reported all their actions to the board of directors.

Q. Then I may take it, you answer affirmatively, that you knew that this was a committee which of itself had no power to bind the board of directors?

A. They referred, and we understood from them that the board when they reported to them, approved their action.

Q. Thus far you have not alluded to that. When did they
454 report to you *to* that they had referred this matter to the board, and that the board had approved their action?

A. That was stated several times by them—that they reported to their board all their actions.

Q. I am now, however, particularly confining you to when it was that this committee said to you that they had reported to the board of directors their action in this particular matter.

A. I do not remember any specific statement to that effect.

Q. But still you knew that this committee had been appointed simply for the purpose of negotiating, did you not?

A. Yes, and we believed that they were acting in good faith, and that they were not attempting to have their board repudiate their work.

Q. But you never asked them whether the board had accepted or repudiated this particular matter, did you?

A. I never asked that question myself.

Q. You were aware, during the course of your negotiations, of the fact that there had been a resolution of the stockholders, such as has been so often referred to in these proceedings, were you not?

A. I was aware of it, I think.

Q. You were aware that Mr. Pullman had referred to the counsel of the company the question of whether or not such resolution need be regarded by him, were you?

A. I was.

Q. Do you remember whether that reference by him ante-
455 dated or succeeded this interview that you have referred to with the committee when he spoke about an intention to cancel?

A. That would be impossible for me to tell; I do not know. This opinion was given in Chicago, and I was in New York.

Q. This notice which *which* — was prepared to cancel; did you see it at the time?

A. I think I saw a pencil draught of it—a memorandum.

Q. In what shape was it when you were before the committee—pencil draught or ink writing?

A. I have tried to recollect that, and it is impossible.

Q. I thought Mr. Bacon had refreshed your memory to a certain extent by this paper?

A. Not as to whether it was delivered to them.

Q. But as to the paper itself which you saw. You saw the concrete form of the thing which refreshed your memory. Was that concrete form in pencil or writing?

A. That was in pencil.

Q. Then, so far as your recollection goes, this thoroughly matured intention of the Pullman Company to cancel never got beyond a pencil memorandum?

A. No, I do not know. I cannot recollect whether an ink copy was furnished to them or not.

Q. What shape was it in when you went to the Central Transportation Company—ink or pencil?

A. As I have said, it is impossible for me to recollect.

Q. Are you certain that you saw it at all?

A. Yes, sir.

456 Q. State how it read—the substance, of course, for no man on earth could remember the words?

A. I do not know that. I could not recollect the wording of it at all.

Q. Nor the substance of the wording of it?

A. No, except that it was a notice to them that the contract would be terminated.

Q. I suppose a notice of that character was only given in consequence of a resolution of your own board of directors?

A. That I do not know.

Q. Did you ever hear of a resolution by your board authorizing the cancellation of this lease?

A. I never heard whether it did or did not.

Q You have had enough experience of law and of lawyers to have heard the expression *in terrorem* frequently, have you not?

A. I have heard it occasionally; yes, sir.

Q. Don't you think this little or big pencil memorandum, whichever it was, was a sort of *in terrorem* thing?

A. By no means. It was the most important thing for the Pullman Company to be relieved from that rental. It was of vital importance. That was business.

Q. But, on the other hand, it was not very desirable for the Pullman Company to be out of the Pennsylvania system, was it?

A. Much better than to be committed to that system and earn a very small rental, and have to pay the Central Transportation Company a very large one.

457 Q. But don't you know at that time you did not know the terms on which you were going to be let into the system?

A. No; but we knew that they would be onerous.

Q. Then let me come back again to this interview or agreement. Wasn't there, from the beginning and antedating this, interviews

and negotiations concerning the sum in dollars and cents which should be paid in future by the Pullman Company—not percentage—no idea of anything other than the dollars and cents to be fixed?

A. No, sir.

Q. Was there not such negotiation antedating this?

A. My recollection is that there was not.

Q. You think this occurred in May, 1884?

A. I gave that as my best recollection. I am not positive about it.

Q. I find that on the 5th of May, 1884, two of these gentlemen who were on that committee, who must then, if your recollection of the date is right, have had the whole thing fresh in their mind, offered the following resolution; by John A. Wright, seconded by W. J. Howard:

"Resolved, That the Pullman committee are hereby instructed to meet Mr. George M. Pullman, and are authorized to say to him that this board of directors will recommend to their stockholders the acceptance at their option of one of the three following propositions: First, for the modification of the present lease to the Pullman's Palace Car Company; second, for sale of stocks; and third, for the interchange of the stock of the Central Transportation Company for the stock of the Pullman's Palace Car Company. First, that
458 the present lease shall be modified from the date of the expiration of the present contract with the Pennsylvania railroad in January, 1885, to cover the length of time for which the Pullman's Palace Car Company are enabled to make a new contract with said railroad company, subject to all the conditions of the present lease, except that the amount of money to be paid shall be $144,000 per annum in place of $264,000, as now paid. Second, that the Pullman's Palace Car Company will agree to purchase from any of the shareholders of the Central Transportation Company any stock of this latter company at the rate of $40 per share, transferable and payable within sixty days after January 27, 1885. Third, that the stockholders of the Central Transportation Company may have the privilege of exchanging their stock for the stock of the Pullman's Palace Car Company at the rate of $40 per share of the Central Transportation Company for shares of the Pullman's Palace Car Company at the rate of $10 per share exchangeable within sixty days after January 27, 1885."

Do you remember an interview with the Pullman committee of the Central Transportation Company in which, in substance, they communicated that resolution of their board?

A. Yes, they communicated the substance of that.

Q. Is it your recollection that the interview in which they communicated to you the substance of that resolution antedated or followed the interview in which, as you say, this notice was spoken of, and this agreement or understanding arrived at?

A. It followed it.

Q. Your communication followed that?

A. No.

Q. Your communication followed the other interview?

A. What date is that?

459 Q. It is May 5, 1884. Now, I find that there was no meeting of the board of directors of the Central Transportation Company following the stockholders' meeting, at which this much talked of resolution was passed prior to that of May 5th, except of the 30th of April, 1884, when this resolution appears:

"The object of this meeting was to discuss the question of what kind of concessions could be made by this company to the Pullman Palace Car Company, in our lease to that company, if it should be found necessary to do so for the interests of our stockholders, and having been requested by Mr. Pullman to have some modifications of said lease, in order to help his company towards procuring a renewal of the present contract with the Pennsylvania Railroad Company, expiring on the 27th of January, 1885, or a new contract for them. Considerable discussion took place, and several plans were suggested; but as a full board was desired before any definite action should be decided upon, it was resolved that this meeting adjourn until Monday next, 5th May, at 3.30 p. m., so that all members should be present."

Do you think that this interview, in which this notice was given, antedated that of the 30th of April, which was immediately preceding the one of the 5th of May, 1884, that I have read?

A. I have no data to tell.

Q. Are you certain whether this conversation, to which you have alluded, after this pencil notice had been prepared, was not antecedent to the meeting of the stockholders of the 21st of April, 1884?

A. I unfortunately cannot give you the date of that.

Q. You are certain it was before they communicated to

460 you this resolution of the 5th of May, 1884?

A. You say that is dated the 5th of May. I do not know when it was communicated to us. That was when it was passed.

Q. Your recollection was that this interview, after that pencil notice had been prepared, was before the Pullman committee communicated to you that long resolution which I read?

A. Yes, sir. So much time has elapsed that, of course, I am speaking somewhat vaguely in regard to dates.

Q. As early as the communication by the Pullman Company, of a resolution in which one of the terms was that the amount of the rent should be $144,000 per annum, in place of $264,000, there was negotiation on the basis of fixed figures, rather than any fair share of rental, was there not?

A. To state this as correctly as I can, I do not recollect their presenting that resolution: but I remember the Pullman committee stating to us the substance of that resolution. I remember the $144,000. They did mention that sum, which we rejected.

Q. Is it not a fact, that at no period of time was it suggested by anybody, that a modification of the lease should be drawn up which should embody any such idea as that a fair share of rental should be paid in future without an actual fixing of the figures?

A. The fixing of the figures was deemed desirable and naturally followed.

Q. Did Mr. Pullman on behalf of his company at any time
461 bind it to go on and obtain a lease from the Pennsylvania Railroad Company on the best terms that it could and bind himself after that was obtained to give a fair share of the rental?

(Objected to as calling for a conclusion of law and not of fact.)

Mr. Johnson states that what he is asking the witness is, if his question is subject to any doubt, not his opinion of the law, but his memory as a witness concerning a fact.

The WITNESS: My recollection is that the arrangement or agreement with the directors was at the outset that the rental of $264,000 should cease; that thereafter they should receive a share of the net revenue under the eighth clause of the lease.

Q. Then your recollection was that Mr. Pullman was bound or agreed, that he would give them that fair share, and that he would make a lease on the best terms he could?

A. Yes, sir; at that time. That is my recollection.

Q. Is it not a fact that Mr. Pullman in the most positive and decided way refused to enter into any agreement with the Pennsylvania Railroad Company, unless the Central Transportation Company bound itself by defined figures to take a certain fixed amount of rental in the future?

A. He did finally, because an agreement in writing had to be drawn up to cover certain contingencies—exchange of stock and various things, and as they knew the terms of the Pennsylvania contract, it was agreed by both parties, without a dissenting
462 voice, that they should put in then the amount of the rental—and when it had been written out Mr. Pullman at the end urged their signing and executing this document.

Q. It is a fact, therefore, that Mr. Pullman insisted that a written agreement fixing in dollars and cents the rental must be executed before he would conclude his arrangement with the Pennsylvania railroad?

A. He did express his anxiety about that before the Pennsylvania contract was to be executed.

Q. And that agreement of the 27th of February, 1885, was set up in the common-law proceedings at the trial as an agreement which had been uncondi-onally executed by the Central Transportation Company, and was binding upon it, was it not?

A. Yes, sir.

Q. And that issue of fact was found against the Pullman Company and in favor of the Central Transportation Company?

A. Not reduction of the rental alone. There were other things involved in that agreement. The reduction of rental alone was something which I have always believed came within the power of the directors, because it was simply carrying out the provisions of the old lease.

Q. But on the issue of fact, Mr. Pullman, yourself, and other witnesses testified that it was an unconditional binding agreement which had been executed unconditionally; other witnesses on behalf of the Central Transportation Company testified to the con-

trary, and that issue was found by the jury in favor of the Central Transportation Company, and against the Pullman Company, was it not?

463 (Objected to; the records are the best evidence.)

A. The records show that; yes, sir.

Q. And it was only after that agreement, which had thus been set up and maintained by your company as a binding, unconditional agreement, was found by a jury not to have been unconditionally executed that you stated anything concerning this agreement that you have testified to today?

A. That modified lease contained more conditions than the fixing of the share of net revenue to the Central Transportation Company.

Q. But it was only after that finding that you testified in any way concerning such an agreement as you have testified to today?

A. I certainly never testified to it so specifically.

Q. You were asked in that testimony as follows (see pages 83, 84, 85, etc.):

"Q. Now coming down to a period immediately anterior to the execution of this modified lease, and particularly referring to the meeting that it is said occurred at Mr. Lane's office on the day before, will you please state just what occurred according to your recollection, at that time, and on the day of the execution and delivery of the paper?

"A. We fixed that date as the 27th of February, 1885.

"Q. What date?

"A. The date at which the meeting occurred at Mr. Lane's office. That is the one you refer to?

"Q. That is the one I now refer to.

"A. We had been informed that a meeting of the directors of the Central Transportation Company would be held at Mr. Lane's

464 law offices on Walnut street, near Seventh, I think at 3 o'clock on that afternoon, and within about half an hour after that time I went to Mr. Lane's office in company with Mr. Pullman, with Mr. Atterbury, who was one of our counsel, and Mr. Goodman, the superintendent of the company, came into the room a little after we had arrived, and Mr. Smith, I think, the private secretary of Mr. Pullman, also came in later. We found that the board was still in session in Mr. Lane's back office, and we were invited to sit down in the front office until the termination of the meeting, and after remaining there a considerable time, the folding doors were opened, and we were invited into the back room and brought into company with the board, which had apparently just adjourned. We were informed that the board had approved and ratified the modified lease. I think it was stated that it had been unanimously approved. I am not certain about that. We got into conversation with the different members of the board, and during this conversation it was stated that there ought to be an insertion made in the modified agreement or lease—I do not recollect the words that were proposed, but to the effect that it should not be binding until ratified by the stockholders of the Central Transportation Company, and this led

to some conversation on the part of Mr. Pullman, principally, and he stated at great length and very emphatically that he was to decide the next day as to whether he would accept for the Pullman Company or reject definitely the contemplated new contract with the Pennsylvania Railroad Company—that he was to give an answer the next day to Mr. Roberts, the president of the Pennsylvania Railroad Company, as to whether he, Mr. Pullman, would accept or reject finally the contemplated new contract with the Pennsylvania Railroad Company, and in view of that he must first have a definite and valid and binding agreement with the Central Transportation Company—he could not take a conditional one—
465 and after some discussion that seemed to be dropped on their part. They did not urge it any longer.

"By the COURT: What was said on their part?

"A. Well, I was trying to think who it was—which director first suggested this to Mr. Pullman. I think it was Mr. Lane, but I will not be positive, and it was argued for some time.

"Q. But you do not remember that it was said in answer to the observations of Mr. Pullman?

"A. I cannot recollect the words that were used, except that they repeated that they would like to have a stipulation to the effect which I have stated.

"By the COURT: Then and there the subject was dropped?

"A. With that the subject was dropped. Mr. Pullman asked at this interview if he could have an executed copy of the modified lease, giving as a reason, I think, that he had to give this answer to Mr. Roberts the next day; and some one said that it could not be executed then, that the seal of the company was in the possession of the secretary and treasurer, Mr. Cottringer, and was in his office in West Philadelphia. It was agreed before we left the room that the officers should meet Mr. Pullman at the Continental hotel about nine o'clock the next morning, and Mr. Cottringer stated he would have the seal of the company there, and Mr. Bingham said he would be there for the purpose of executing the modified lease."

* * * * * * *

"By Mr. BULLITT: We will come to the next day. Please state what occurred the next morning?

"A. At the Continental hotel?

"Q. Yes. Who was present, and what occurred?

"A. The next morning, which was Saturday, I was in Mr. Pullman's room at the Continental hotel.

"Q. Room No. 20?

"A. I do not recollect the number of the room. It was a
466 parlor with a bed-room adjoining. There were present Mr. Pullman, Mr. Bullitt, counsel, Mr. Atterbury, one of the counsel of the Pullman Company, Mr. Goodman, the superintendent of the Pullman Company, and Mr. Smith, the private secretary of Mr. Pullman. There came into the room Mr. Bingham, Mr. Lane and Mr. Cottringer. Mr. Cottringer brought with him the stamp for affixing the impression of the seal of the Central Transportation Company. After some interchange of words, my recollection is that

Mr. Lane, who had been chairman of the committee appointed by the board of the Central Transportation Company to conduct these negotiations with the Pullman Company looking to a modified lease, and was also, as I understood, acting as counsel for the Central Transportation Company, took a copy of the modified lease in his hand and said to Mr. Pullman, 'I still think we ought to insert here,' pointing to some particular part of the instrument, 'a stipulation'—I do not recollect the words he suggested—but to the effect that this is not to be binding until ratified by the stockholders. Mr. Pullman, then, with some little impatience, if I recollect, in his manner, stated, even more emphatically perhaps than the afternoon previous, that he could not accept any conditional modified lease, and wondered how any rational business man could be expected to bind himself for fifteen years to a contract with the Pennsylvania Railroad Company, a most exacting one in all its particulars, from which he had no prospects of deriving a net revenue even equal to this $66,000 proposed as a rental in the new lease, and this by a conditional contingent agreement with the Central Transportation Company, with a provision by which it might be repudiated, and which would leave the Pullman Company in this very awkward and embarrassing condition. That was the substance of the statement, and several in the room took part. I think Mr. Atterbury had something to say to that effect, and Mr. Bullitt. After some discussion in this matter further, Mr. Lane went to Mr. Bing-
467 ham, and I think they had some conversation, and Mr. Bingham then, on the center table, in the middle of this parlor, signed his name to the modified lease; Mr. Cottringer, the secretary and treasurer, then took the stamp and affixed the impression of the Central Transportation Company's seal, and attested it, and gave it to Mr. Bingham, Mr. Bingham gave it to Mr. Pullman. I recollect he stood there for a time holding it in his hand. That was the substance of that interview, as near as I can recollect it."

I omitted to read, because it was not in order in my notes, what occurred prior to it, but which my copy (being typewritten copy) is put later.

"A. The date at which the meeting occurred at Mr. Lane's office, that is the one you refer to?

"Q. That is the one I now refer to.

"A. We had been informed that a meeting of the directors of the Central Transportation Company would be held at Mr. Lane's law offices on Walnut street, near Seventh, I think, at three o'clock on that afternoon, and within about half an hour after that time I went to Mr. Lane's office in company with Mr. Pullman, with Mr. Atterbury, who was one of our counsel, and Mr. Goodman, the superintendent of the company, came into the room a little after we had arrived, and Mr. Smith, I think, the private secretary of Mr. Pullman, also came in later. We found that the board was still in session in Mr. Lane's back office, and we were invited to sit down in the front office until the termination of the meeting, and after remaining there a considerable time, the folding doors were opened, and we were invited into the back room and brought into company

with the board, which had apparently just adjourned. We were informed that the board had approved and ratified the modified lease. I think it was stated that it had been unanimously approved. I am not certain about that. We got into conversation with the different members of the board, and during this conversa-
468 tion it was stated that there ought to be an insertion made in the modified agreement or lease; I do not recollect the words that were proposed, but to the effect that it should not be binding until ratified by the stockholders of the Central Transportation Company, and this led to some conversation on the part of Mr. Pullman, principally, and he stated at great length and very emphatically that he was to decide the next day as to whether he would accept for the Pullman Company or reject definitely the contemplated new contract with the Pennsylvania Railroad Company; that he was to give an answer the next day to Mr. Roberts, the president of the Pennsylvania Railroad Company, as to whether he, Mr. Pullman, would accept or reject finally the contemplated new contract with the Pennsylvania Railroad Company, and in view of that he must first have a definite and valid and binding agreement with the Central Transportation Company—he could not take a conditional one—and after some discussion that seemed to be dropped on their part. They did not urge it any longer.

"By the COURT:

"Q. What was said on their part?

"A. Well, I was trying to think who it was—which director first suggested this to Mr. Pullman. I think it was Mr. Lane, but I will not be positive; and it was argued for some time.

"Q. But you do not remember that it was said in answer to the observations of Mr. Pullman?

"A. I cannot recollect the words that were used, except that they repeated that they would like to have a stipulation to the effect which I have stated."

The WITNESS: I remember that; yes, sir.

Q. Do you remember speaking of an interview between Mr. Bingham and Mr. George Biddle and Mr. Pullman, I think, at the Windsor hotel, as follows:

469 "Q. Without going into all the details, please state what Mr. Bingham and Mr. Biddle wished Mr. Pullman to do, and what Mr. Pullman's reply was.

"A. Mr. Atterbury and I accompanied Mr. Pullman to the Windsor hotel and there met Mr. Bingham and Mr. George Biddle, who seemed to be acting as counsel for him, they stating, Mr. Biddle doing the principle talking, they came over to urge Mr. Pullman to consent to a cancellation of this modified lease. We expressed surprise at such a request as that and Mr. Pullman asked them why they made such a request, and reminded them that on the strength and good faith of that agreement he had entered into a most important contract with the Pennsylvania Railroad Company for fifteen years and asked them the reason for making such a request. They stated generally that there had been a stockholders' meeting

in the early part of the month, and there had been a good deal of confusion and criticism and they thought they might use their efforts and would work for the ratification of an instrument of this kind at the annual meeting of the stockholders. Mr. Pullman at once declined to be a party to breaking this modified lease on the part of his company, and after an interview, probably of three hours, the gentlemen left."

A. Yes, sir.

Q. So that I may take it that from the time that agreement was delivered until after the trial by the jury your company insisted upon that as a binding agreement upon the Central Transportation Company?

A. They believed it was a binding agreement.

Q. And so insisted?

A. Yes, sir.

Q. You have spoken about the advantages of this lease and the figures, and that figures were presented to the committee or

470 to the directors of the Central Transportation Company. Can you now recall in substance, or approximately, the amount stated by Mr. Pullman or his officers to the Central Transportation Company as having been the past earnings of the company per annum?

A. I can tell you the method by which the figures were arrived at, but I cannot remember the figures.

Q. The directors of the Central Transportation Company, who have testified on behalf of your company, have stated the method to have been this: They received figures of what had been earned in the past, and deducted from it a certain amount which, under the modified lease, could not be earned in the future, and so arrived at their estimate. Is that your recollection of the method?

A. That is partly it, but they went at it in this way. They took the earnings per car—the average earnings per car; then they found out the amount of the operating expenses and all the proper charges to be made against the gross earnings, whereas the Pennsylvania road had heretofore paid mileage at three cents a mile in lieu of the repairs to the bodies and trucks of the cars, and had washed and cleaned the cars, and done certain things, while this burden under the new contract was thrown upon the Pullman Company, and it was very easy to see what that amount was. They took the gross earnings per car, and made these deductions and arrived at about what the net would be.

Q. Were not the total net earnings in the past given to them?

471 A. I presume they were.

Q. What is your recollection of what was stated to have been the previous net earnings by Mr. Pullman from the old lease?

A. That I don't recollect.

Q. Could you approximate within $200,000 per annum of it? That is, what was stated to the board of directors of the Central Transportation Company to have been the net earnings under the old contract?

(Objected to, as immaterial; the witness has stated that he does not know.)

A. I do not recollect.

Q. What was stated to have been the average net earnings per car, or what the average per car, and what the average operating expenses under the old contract?

A. In analyzing these they dwelt and figured principally upon earnings per car, if I remember, and that I do not recollect the figures about.

Q. Couldn't you approximate that, either?

A. Yes, sir.

Q. Is your mind entirely blank on the subject of those all-important statements as to what had been the net earnings in the past, the gross earnings in the past, and the average operating expenses in the past?

A. They were put down in detail, but I do not recollect them at all.

Q. From your familiarity with the company you can tell us, apart from what was then before them, what had been the average net earnings under the old contract per annum?

472 A. That I could not tell you, because I never burdened my mind with those figures. The earnings are different on so many different roads, and I never burden my mind with figures.

Q. So that you could not approximate that?

A. I could not approximate it.

Q. Could you approximate in figures the value per annum to the Pullman Palace Car Company of having maintained intact the connection that that gave them with the Pennsylvania system, apart from the actual profit in dollars and cents of running their cars on the system?

(Objected to, as immaterial.)

A. No, I could not.

Q. Can you give us any idea at all on that subject?

A. No, I couldn't say that it was any particular advantage.

Q. It was a very important advantage, was it not?

A. I do not know any collateral advantages that were important.

Q. The actual signing of the lease with the Pennsylvania Railroad Company was subsequent to the meeting of the stockholders of the Central Transportation Company at which they refused to accept what the directors had done, was it not?

A. The actual execution of it was after that; yes, sir. However, that contract was fully agreed to, and the cars were operated under its terms.

Q. Was there any interview at which it was agreed between the Pullman Company and the Central Transportation Company

473 as to what percentage of the net revenue would be a fair share of the earnings of the new system?

A. No, I don't recollect percentages being named.

Q. Dollars and cents were always named?

A. Yes, sir.

Q. And the propositions and counter-propositions were always embodied in dollars and cents?

A. It was in dollars and cents founded upon revenue to be derived.

Q. Do you remember in your testimony, page 90, saying this:

"He (Mr. Pullman) stated repeatedly that he would take his chance upon that being a valid instrument, for the reason that the directors had the power to make it a valid instrument?

"Q. But what other chance was there; the chance of the stockholders intervening, was there not? There was no other chance in it, was there? That was the game of roulette in which there was only one turn; isn't that so?

"A. That was all there was in connection with it.

"Q. So that at the time of the execution of that instrument this question was before you and Mr. Pullman?

"A. Yes, sir.

"Q. The question of the stockholders' rights?

"A. Yes, sir.

"Q. And the delivery of the paper was after the expression of a desire to put the proviso into the instrument itself, and after Mr. Pullman said he would take the chances of it?

"A. Yes, sir; it was executed after that."

A. I remember that, and I remember getting that impression, and I think I corrected it afterwards, and stated that that occurred
474 in a meeting with Mr. Stevens in the following June instead of at that meeting. It was only that I mistook the meeting.

Q. Please look over your testimony, and state where that occurred?

A. I was recalled, if I remember. At page 122, I stated:

"I ask to make a correction in two points in my testimony. I find from the question that I became confused at one time between the occurrences at two different interviews, the interview with the officers of the Central Transportation Company, on the 28th of February, at the time the modified lease was executed, and the interview in June in the evening with Mr. Stevens. At the interview with Mr. Stevens in the evening, as I stated, the words 'taking the chances' were used, and, as I stated, Mr. Pullman did say he would take the chances there upon the validity of the modified agreement, but I feel very certain now that that expression was not used at the previous meeting on the 28th of February."

Redirect examination.

By Mr. ISHAM:

Q. On page 83 of the printed copy of the bill of exceptions is a passage, which Mr. Johnson read to you, which related to what transpired when you went to a meeting of the directors at Mr. Lane's law offices, and the expression of Mr. Pullman is that he was to give an answer to Mr. Roberts whether he would accept or reject finally the contemplated new contract with the Pennsylvania Railroad Company, "and in view of that he must have a definite and valid

and binding agreement with the Central Transportation Com-
475 pany—he could not take a conditional one." You have stated that there was, early in your negotiations, an agreement to substitute a rental based on the earnings under the new Pennsylvania Railroad contract for the old fixed rental?

A. Yes, sir.

Q. There were subsequent negotiations for the purpose of adjusting the share of those earnings going to the transportation company at a fixed sum?

A. Yes, sir.

Q. Explain what you understand by the phrase, "and in view of that he must have a definite and valid and binding agreement." What did he mean by the word "definite"?

A. Having an agreement defining explicitly the future relations between our two companies and fixing the amount of the share of this revenue.

A. Then your intention relates to the ascertainment at a fixed sum of what the share was that was to be paid?

A. Yes, sir.

Q. If a clause had been put into that contract, as you viewed it at that time, leaving it open to be rejected by the stockholders which were repudiating, the $66,000 as a definite sum would be gone, would it not—it would be thrown open and contingent again as to the amount?

A. That would be thrown open.

Q. I call your attention to another passage read to you by Mr. Johnson on page 85 of the same printed copy of the bill of exceptions, in which, speaking of Mr. Pullman, you say he stated
476 that he could not be expected to bind himself for fifteen years to a railroad contract, "a most exacting one in all its particulars, from which he had no prospects of deriving a net revenue even equal to this $66,000 proposed as rental in the new lease, and this by a conditional contingent agreement with the Central Transportation Company with a provision by which it might be repudiated, and which would leave the Pullman Company in this very awkward and embarrassing condition." Does that phrase, "conditional contingent agreement," to which Mr. Johnson called your attention, relate to the uncertainty in the fixing of that rental if it should be rejected by the stockholders if that clause were put into it?

(Objected to as leading.)

A. It related to the uncertainty of the share of net revenue that would be paid to the Central Transportation Company.

Q. Let me now turn back to the question to which Mr. Johnson called your attention on page 82 of the same printed document in connection with which he asked you why you did not state, in answer to that question, what you have stated in your testimony today. That question is:

"Will you state what your recollection is of the conversation between Mr. Pullman and the directors of the Central Transportation Company upon the question of the necessity of having a defined

contract with the Central Transportation Company before making a new contract with the Pennsylvania Railroad Company."

Tell me what you understand the reference of "a defined contract" to be in that question?

477 A. I understood "a defined contract" to be the agreement entered into defining the share of the net revenue which was to go to the Central Transportation Company.

Q. Specifying how much that was to be?

A. Specifying the amount.

Q. Then you say that he insisted that it was important to him, before making his contract with the Pennsylvania Railroad Company, that the amount of that should be defined?

(Objected to as leading.)

A. It was very important to him.

Q. And that related then, did it not, to later and subsequent negotiations concerning an ascertainment definitely of the share of the revenue which was to be paid?

(Objected to as leading.)

A. It did.

Q. I ask you, therefore, whether that was the view of the matter in your mind at the time, and whether you considered that that question called for any further statement than such as related to the definite ascertainment of the amount to go to the Central Transportation Company?

(Objected to as leading.)

A. I thought it did not; that when I was required to answer the question in regard to a definite agreement I was to dwell upon the definite amount fixed as the share of net revenue.

Q. And the negotiations relating to that?

A. And the negotiations relating to that.

Q. In that suit at law, in which you gave that testimony, the Pullman Company was standing upon the obligation of that contract called the modified lease, was it not?

478 A. It was.

Q. In which that sum was fixed, $66,000?

A. It was; yes, sir.

Q. The only question at issue in that case, was the validity and obligation of that modified lease, was it not?

A. That was the only question involved.

Q. In the interviews between yourself and Mr. Pullman, and others, in which he stated his purpose of annulling the lease, you have said that he stated to them that it was for the purpose of extinguishing that old rental of $264,000 a year?

A. He did.

Q. And that this purpose to annul was opposed by the Central Transportation. What did he say to them upon the subject of the continuance of that $264,000 a year?

A. He told them that that was the important consideration with

him—that it would be a calamity to his company to have that continue, and that it must be distinctly understood to start with that, that rental must cease from the termination of the contract with the Pennsylvania Railroad Company.

Q. What was their attitude with reference to that?

A. They, without a dissenting voice, agreed to that.

Q. Do you recall discussions with the directors of the Central Transportation Company over the details of a surrender of the cars and other demised property, in case the lease should be annulled?

479 A. There were several discussions on it.

Q. Protracted or otherwise?

A. Protracted, and at different interviews as to just where it would land the two companies—this action.

Q. Was that subject extensively considered and debated?

A. It was very extensively considered.

Q. Who were present at such times?

A. Mr. Lane, Mr. Howard, Mr. Wright, and sometimes Mr. Bingham.

Q. Who were there for the Pullman Company?

A. Mr. Pullman, myself, and at different times Mr. Goodman, superintendent of the Central division, Mr. Davy, the auditor, and Mr. Bacon, the assistant general counsel.

Q. Was Judge Loughrane present at some of those discussions?

A. I think not in the earlier discussions.

Q. Was there a disparity of opinion as between the Pullman representatives and their counsel and the representatives of the Central Transportation Company as to what their rights would be concerning the demised property in case of a surrender and annulment of the lease?

A. There was. There was, I think, confusion in their mind in regard to the interpretation of the lease in that respect.

Q. Differences of opinion about it?

A. Differences of opinion and discussions arose therefrom.

480 Recross-examination.

By Mr. JOHNSON:

Q. Judge Isham has asked you about a discussion concerning the delivery of the cars, and what should be delivered, and all that. Those discussions were continued almost down to the 27th of February, 1885, were they not?

A. No.

Q. When did they cease?

A. They ceased the very moment that we had all agreed that we would make the best contract we could with the Pennsylvania Railroad Company and pay to the Central Transportation Company a share of the net revenue.

Q. Then that subject was never discussed after this interview you have referred to at which the notice was spoken of?

(Objected to.)

A. No; the discussions were previous to that.

(Objected to; the witness has not specified any particular interview at which everything was closed.)

By Mr. JOHNSON:

Q. There was only one interview when this notice was referred to—the intended notice to cancel?

A. Well, at the time that that was presented. But previous to that, as I have stated before, there were meetings with the representatives.

Q. Then, all these antedated that meeting at which that notice was spoken of—that pencil notice made, you think, in May, 1884?

A. Yes, sir; all the discussions in regard to the surrender of cars.

481 Q. Therefore, those discussions must have all antedated the stockholders' meeting at which this famous resolution was passed of the 21st of April, 1884?

A. Of course this was discussed. I can't identify the interviews. There was a discussion at one of the meetings the time that this notice was given to them.

Q. Then, at the time prior to the signing of the agreement of 27th February, 1885, you did not think that there was any definite contract between the Pullman Company and the Central Transportation Company?

A. There was as to the termination of the rental; there was a distinct understanding; we would not have proceeded without it.

Q. If the rental was to end, then the Pullman Company was without any binding duty at all, was it not?

A. You will recollect that there was to be a written agreement drawn up. That embodied a number of things besides the rental, and now that we knew the terms of the Pennsylvania new contract, it was a business-like proceeding to ascertain what the fair share of revenue would be and insert it in that.

Q. If your company was no longer under any obligation to pay the rental, it was out of trouble, was it not?

A. Not at all; because then it would have had to have been determined as to the share by arbitation or by the courts, or in some way. It might have been left hanging there in an unbusiness-like shape.

482 Q. But still it did not have to pay any rent until it was ascertained what would be that fair share, did it?

(Objected to as a question of law.)

Q. Did you understand that if you could not agree upon the rental that the agreement was that the Pullman Company should not pay any rental until it was ascertained?

A. I never discussed that matter myself. I do not recollect that it came up.

Q. Was it ever discussed as to what percentage of the net revenue should be considered a fair share of the rental?

A. No; it was not, and for one reason; it was that the Pullman Company wanted to be entirely fair in the matter, and it proposed that it should pay over substantially all the net revenues after deducting operating expenses and depreciation of cars and interest on value of equipment—additional equipment furnished the Pullman Company.

Q. To sum it all up, is it not a fact that you testified substantially that the Pullman Company refused to enter into any contract with the Pennsylvania Railroad Company, no matter what had taken place before, until the amount of rental to be paid in dollars and cents had been definitely fixed?

A. Mr. Pullman stated that to them, and you must remember the circumstances under which it was stated. Mr. Pullman was feeling indignant that proceedings had gone that far and they had ascertained facts and drawn up an agreement, and they were delaying the execution of it, and this contract was pending. He said to them that he did not want to make that contract because it left
483 the amount of net revenue to be paid to depend upon the arbitration by the courts to be settled in the future.

Q. But don't you remember that you never, when you were testifying to what took place then, said a word about his having said that he would not let the amount be referred to arbitration or to the courts in the future—that you utterly failed to recall that part of the conversation?

A. No, I have not stated that he said that, but I am stating the condition—the circumstances.

Q. You imagine that that was the condition?

A. No, I was stating facts—existing circumstances at the time.

At this point of the proceedings, Mr. Isham stated, after having had read over to him the immediately preceding questions and answers of the witness, that he thought he had made a mistake; that he had understood General Porter to be speaking there for himself, and that he had never understood him at all, and did not think that he (the witness) had in his (Mr. Isham's) hearing said that Mr. Pullman ever said anything of that kind.

Mr. Johnson, on the contrary, stated that the witness' testimony had been given as read by the stenographer.

The WITNESS: Mr. Pullman did not say that. I was not quoting from him then.

Mr. JOHNSON: When you say that it was agreed after this pencil notice or the substance of it was communicated, what do you mean by "agreed"? Was there a resolution of the committee?

A. I have stated before that it was a verbal agreement.
484 Q. How was that done? Did all talk at once, or did one man talk and the rest remain silent, or did they pass a resolution? How did they agree?

A. Mr. Lane, as I recollect it, conducted the conversation principally on their side. He was chairman of the committee, and my recollection is that all of them expressed their assent to this. There was no dissenting.

Q. Did you recall it like a number of judges, one after the other expressing an opinion, or did all talk at once, or did they talk seriatim, or did only one man talk and the rest say nothing?

A. My recollection is that when Mr. Pullman stated that there must be an understanding that that rental, $264,000, should cease, that Mr. Lane, chairman of the committee, took that up with him and acquiesced entirely in it, and said that that should be their understanding, and the other members, who were present, assented to this view. I cannot recollect, of course, the conversation that occurred, exactly.

Q. Then the agreement, so far as you speak of it, was an agreement that they should not pay $264,000 rent in the future?

A. After the termination of the Pennsylvania contract.

Q. Where was the meeting at which this occurred with the committee?

A. The meeting was, I think, in the Continental hotel. Nearly all our meetings were there.

485 Redirect examination:

By Mr. ISHAM: I desire to call your attention to an answer that the stenographer has upon his notes in which you say, or appear to say, that Mr. Pullman made some statement about arbitration, etc., and I ask the stenographer to read that question and answer.

(Said question and answer were here read to the witness.)

Q. Did you mean to state that Mr. Pullman made that statement and said those things?

A. Nothing was further from my thoughts than to quote Mr. Pullman. I was making this statement myself with no intention of quoting Mr. Pullman. I never heard that language used by Mr. Pullman.

HORACE PORTER.

486 CHARLES E. PUGH, having been duly sworn, was examined as follows:

By Mr. ISHAM:

Q. You are the general manager of the Pennsylvania Railroad Company?

A. I am.

Q. Were you such general manager during the years 1883, 1884 and 1885?

A. Yes; I have been general manager since 1882.

Q. You were familiar with the contract between the Pennsylvania Railroad Company and the Pullman Palace Car Company for the sleeping-car service on that road which expired in January, 1885?

A. I was.

Q. Did you take part in the negotiations between the officers of the Pullman Company and the railroad company concerning the making of a new contract to take effect on the expiration of that one?

A. I was present at very many of the interviews?

Q. You took part in those negotiations?

A. Yes, sir.

Q. How long before that contract expired, according to your best recollection, did the negotiations concerning these terms begin?

A. Several months preceding the consummation of it. Many interviews, more or less informal, were held during the early part of the preceding summer.

Q. Had the railroad company at one time had any project of running and managing its own sleeping-car service?

487 A. That was one of the features that was very carefully considered by the officers—the practicability of doing so.

Q. But finally you entered into negotiations with the Pullman Company for a new contract?

A. Yes, sir.

Q. Over how long a period did those negotiations extend? Was it several months?

A. Yes, sir.

Q. Were there many interviews?

A. Quite a number.

Q. Were they protracted?

A. They were protracted.

Q. What was the difficulty in arriving at the terms of the contract?

A. Mr. Pullman was very anxious to make the most favorable contract possible for his company. The Pennsylvania Railroad Company felt that he had a pretty liberal one—that the old contract had been pretty liberal, and a good deal more so than they were willing to perpetuate.

Q. Was it over that subject that the negotiations back and forth were protracted so long?

A. As to the general terms and details of the contract, the railroad company insisted upon the total abolition of a great many features that were embraced in the old contract. Mr. Pullman and his officers labored very hard to get the best contract they could, frequently urging as a necessity that unless they got a pretty reasonable contract they would not be able to pay the Central Transportation Company rental.

488 Q. What did they say on that subject of the relations of that contract to the Central Transportation Company?

(Objected to as irrelevant.)

A. They gave us to understand that any future arrangements with the Central Transportation Company would be based upon the contract that they would make with us.

Q. On what they could earn under that contract?

A. Yes, sir.

Q. Did you have, in the course of these negotiations, any conversations or interviews with officers or directors of the Central Transportation Company?

A. I had several times.

Q. With whom do you recall such interviews?
A. Mr. Wolverton, Mr. Lockard and Mr. Cottringer.
Q. What was Mr. Cottringer's relations?
A. He was secretary and treasurer of the company.
Q. What was the nature of your interviews with these gentlemen—what was the subject-matter?

By Mr. JOHNSON:

Q. Did you have any official interviews with these gentlemen, acting officially for the company, or were they merely with them individually?
A. Just individually.

(Mr. Johnson objects to any conversations occurring between Mr. Pugh and persons who, though they may have been officers or directors of the company, were not acting officially, inasmuch as such conversations are entirely irrelevant.)

489 The WITNESS: These gentlemen seemed very desirous of ascertaining, in a friendly way (for they were all personal friends of mine), what the nature of the negotiations was, and stated that their future arrangements with the Pullman Company would be based upon our contract, and they hoped we would be able to make a very liberal contract with Pullman.

By Mr. ISHAM:

Q. They stated that the terms of that contract—the revenues to be derived under it—were material to them?

(Objected to as leading.)

Q. What did they say on the subject of their rental and of their compensation?
A. That their compensation was to be dependent upon the earnings that the Pullman Company could make under this new contract.
Q. How many such interviews did you have with these gentlemen from time to time?
A. I think, twice with Mr. Lockard, and three or four times with Mr. Wolverton; I do not remember how many with Mr. Cottringer. It would be as we happened to meet him.
Q. Did these gentlemen know the difficulties the Pullman Company was experiencing in arriving at a satisfactory contract with the railroad company.
A. I think they could infer so from the general statements that I would make—that we were endeavoring to make a very favorable contract for the railroad company with Mr Pullman, or with the Pullman Company, and that it would not be nearly so liberal in its terms as the old contract.

Cross-examination waived.

CHARLES E. PUGH.

490 EDWARD H. GOODMAN, sworn and examined:

By Mr. BURRY: State your name, residence and occupation.

A. My name is Edward H. Goodman; residence, Chicago. I am the second vice-president of the Pullman Palace Car Company.

Q. How long were you superintendent of the Pullman Company?

A. I was assistant superintendent from 1870 to 1875, division superintendent from 1875 to 1885; from May, 1885, I was eastern general superintendent until August, 1886. I am now second vice-president.

Q. What was your occupation immediately preceding your engagement with the Pullman Company in 1870?

A. I was clerk for the general superintendent of the Central Transportation Company.

Q. Did you remain in the employment of the Central Transportation Company up to the time it leased its property to the Pullman Company?

A. Yes.

Q. The Central Transportation Company referred to is the one which is a party to this suit?

A. Yes, sir; it is.

Q. Did you come direct from the Central Transportation Company into the employment of the Pullman Company on the execution of that lease?

A. I did.

Q. Were you familiar with the 119 cars formerly belong-
491 ing to the Central Transportation Company which were transferred under the lease referred to?

A. Yes, I knew them all.

Q. Did you continue familiar with them after they came into the possession of the Pullman Company?

A. Yes, sir.

Q. Were you from 1870 down to July, 1886, familiar with the sleeping-car equipment run upon the Pennsylvania Railroad Company's lines?

A. I was.

Q. Did you have general charge of that equipment?

A. I did.

Q. State how many of the 119 cars leased by the Central Transportation Company were in existence on and immediately prior to July, 1886; and in this connection you may look at Exhibit F to the bill (handing same to witness).

A. Thirty-seven.

Q. Did you make an examination of these cars in June, 1886?

A. I did.

Q. For what purpose?

A. To determine their condition, and to make a calculation of what it would cost to put them in running condition.

Q. How long have you been engaged in the sleeping-car business?

A. Since 1868.

Q. During that time have you had any experience in the cost of building and repairing sleeping cars?

A. I have.

Q. Are you familiar with the cost of such building and repairing?

A. I am.

Q. Did you make an estimate of how much it would take to put the thirty-seven cars mentioned in good running order?

A. I did, at the time.

Q. State what amount you estimated.

A. My recollection is that I estimated $53,000.

Q. Up to what standard of repair did you calculate that amount of money would bring these thirty-seven cars?

A. It would bring them into safe condition at the ordinary rate of speed, so that they would be safe to transport people in.

Q. Would they then be good sleeping cars, such as are usually used upon railroads?

A. They would not.

Q. State what would be their condition and rank as cars after such repairs would be put upon them, in your estimation.

A. Their condition would be such that they would probably be allowed to transport, upon certain emergencies, troops, as we did afterwards with some of them in taking the State troops to Washington, but as for sleeping-car service, they were practically unfit for any such service as that. No road would allow them to be run over their lines as sleeping cars. In fact, I had to get a special permit at the time Mr. Hayes was inaugurated to permit them to run over the lines to Washington.

493 Q. Taking into account the present requirements of travel and of railroad companies with regard to sleeping cars, and the plan of the original construction of these 119 cars, including size, etc., would it be possible or practicable to repair these cars into a condition such as would be acceptable by railroad companies as sleeping cars?

A. It would not.

Q. Give any reason that you know of why it would not.

A. The reason, first, was at the time these cars were built by the Central Transportation Company the railroads over which they ran all demanded a light car. That is, we were confined virtually to a 38,000-pound car. Therefore, the frames of these were made very light, and consequently they had, of course, with light frames, a very short life. The cars that were built in 1869 were virtually condemned in 1874, so that with these light frames, after four or five years, and not to exceed seven years of service, they were practically unfit for remodeling or converting into a modern car on account of their original construction.

Q. How about the size?

A. The size of some of them was all right. The majority were short. Many of them were ten-section cars. In other respects the size was all right.

Q. Please look at the second division of Exhibit F to the bill.

The second part of it enumerates sixty-three of these originally demised Central Transportation Company cars. State what became of them.

494 A. Without referring to my original data I could not tell which of these cars were condemned and settled for, and which are still in existence, stored at various places.

Q. Are any of those cars in existence?

A. Yes, sir.

Q. Did you not say that only thirty-seven of them were in existence now?

A. Only thirty-seven.

Q. Are not that thirty-seven enumerated in the first paragraph of Exhibit F?

A. Yes, sir.

Q. Did you help prepare Exhibit F?

A. Yes, sir; I did. I made it.

Q. Do you say that any of the cars mentioned in the second division of Exhibit F are in existence also?

A. I don't think they are.

Q. As they passed out of existence were any cars substituted therefor?

A. Yes, sir.

Q. What do you mean by substituted?

(Mr. Johnson objects to a question first put and then answered, and then another question asking the witness what he means by an answer that he has already given.)

A. I mean that new cars were to take the place of the old cars.

Q. In what service, upon what roads?

A. In service over the Pennsylvania system of lines.

Q. Can you refer to an enumeration of cars that were substituted for the sixty-three which you have already testified passed out of existence?

495 A. I can only refer to this (Exhibit F) without taking my original data.

(Mr. Johnson objects to the witness referring to anything but original data, and if those original data are themselves taken from books, he objects to the witness referring to the original data instead of the books themselves.)

By Mr. BURRY: You have testified that the cars mentioned in the last part of division two of section F, have been destroyed and passed out of existence. Why were they destroyed?

A. Because they were unfit for service.

Q. How were they destroyed?

A. They were destroyed by being scrapped as we call it, by the railroad company. Broken up and the old iron got out away from the wood.

Q. Were the cars mentioned in the first part of division two of Exhibit F, substituted in place of those sixty-three cars so destroyed?

A. To the best of my recollection, yes, sir.
Q. How closely was this substitution made?

(Objected to, because if there was a substitution it could not have been close, but must have been immediate.)
(Question withdrawn.)

Q. You have said that the sixty-three cars so destroyed were condemned and scrapped by the railroad companies; when the railroad companies so condemned and scrapped these cars, did they allow the Pullman Company any compensation for them?

A. They did.

496 Q. Do you know about the cost of these cars that were substituted in place of the sixty-three destroyed cars, speaking generally?

A. I do.
Q. State how the amount received from the railroad companies for the scrapped and destroyed cars compared with the cost of the cars which were substituted in place of them?

(Objected to as irrelevant.)

A. In some cases about one third of the cost of the new car, and in other cases not quite one-half.
Q. In the third subdivision of Exhibit F, there are enumerated nineteen cars originally belonging to the Central Transportation Company. Do you know upon what railroad those nineteen cars were assigned for service?
A. The Baltimore and Ohio.
Q. State if you know what became of those nineteen cars?
A. Most of these cars were condemned and disposed of by the Baltimore and Ohio railroad, and the Ohio and Mississippi railroad.
Q. Are any of them in existence now?
A. I don't know; they were in existence in 1885; I could not tell you today. Some of them were in existence in 1885.
Q. Can you state how many, and which ones?
A. I am only positive of cars Nos. 83 and 84.
Q. Do you know which of them were condemned and destroyed by the Baltimore and Ohio railroad, and which by the Ohio and Mississippi?

A. The Ohio and Mississippi destroyed Nos. 36, 37, 53, and
497 54, and the Baltimore and Ohio the balance, except Nos. 83 and 84. There might be one or two more cars there, but I cannot tell from my memory at present.

Q. Are any of those nineteen cars, except 83 and 84, now in existence?
A. I don't know.
Q. As these nineteen cars were condemned and destroyed, or such of them as suffered that fate, were any cars substituted in place thereof?
A. No; you can hardly call that substitution, for the reason that a new contract was entered into with the Baltimore and Ohio rail-

road, which was an association contract. In other words they were joint partners with us. Therefore, all new cars came in under the new agreement.

Q. Please give your best estimate of what would be the value now of those nineteen cars originally belonging to the Central Transportation Company, if they were now reproduced in good running order and repair, for that class and style of car?

(Objected to as irrelevant.)

A. They would be worth six thousand dollars each, provided you had a place to use them.

Q. If those cars had been continued in existence to date as are these thirty-seven mentioned in the first subdivision of Exhibit F, and were now put into good running order and repair, what would they be worth each?

A. That is very hard to say. They would be worth only what you could get for them. So far as their intrinsic value is concerned I should say that they would not be worth over $2,000 each, if they were put in good running order and repair.

498 Q. Do you mean as good order as they would be susceptible of?

A. As good order as they would be susceptible of being placed in, without remodeling and modernizing them, but simply to expend money enough on them to put them in good running order and repair, they would not be worth more than $2,000.

Q. Do you remember how many of these 119 cars were run upon the Pennsylvania road at the time they were originally demised to the Pullman Company?

A. I don't recollect exactly. I think somewheres about eighty-three—eighty-three or eighty-four cars.

Q. How long was it before they began to be condemned by the Pennsylvania Railroad Company, or withdrawn from its road?

A. They commenced at once.

Q. What was done with those cars, or why were they withdrawn?

A. On account of their being unfit for service.

Q. Why were they not put in good order and put back again?

A. Because we did not consider that it was a justifiable expense, and neither did the Pennsylvania Railroad Company. They found by experience it would cost more than $6,000 to modernize them and put them in satisfactory condition, and they preferred to settle and pay for the cars and let the Pullman Company build new ones to take their places.

499 Q. Please state the average value of the cars included in the sleeping-car equipment operated by the Pullman Company upon the lines of the Pennsylvania Railroad Company, the Cincinnati, Hamilton and Dayton Railroad Company, the Cincinnati, Indianapolis, St. Louis and Chicago Railroad Company, and the Louisville, Cincinnati and Lexington branch of the Louisville and Nashville Railroad Company during the year 1885, and the first half of 1886?

A. I should say that the average value would be fourteen thousand dollars.

Q. What was the condition of the equipment during that time?

A. It was good.

Q. How was it as to the age of the cars, were they generally new or old?

A. Some of the cars were twelve years old, but we had at that time got through with all of the remodeling and renovating, and in addition to that we had placed on the lines in 1880 and 1881 and up to 1884, the time you mentioned, a great many new cars, which cost us from $16,000 to $17,000 apiece.

(Mr. Johnson asks that the witness at the next meeting will have present, in order that he may be able to cross-examine him, all books and papers from which he made the data that was the basis of Exhibit F, so that Mr. Johnson may cross-examine him upon the original sources of his information.)

The WITNESS: Some of the original data and the diagrams I think, from 1870 to the present time, would fill about fifteen cars.

Mr. BURRY: Where are they?

The WITNESS: They are stored at various places, boxes after boxes.

500 Mr. JOHNSON: Where you are testifying from memory of course your memory is your basis, but where you are testifying from books, and have no ability to give the testimony except from books, I wish to see those books in order that I may verify your testimony. One in particular is required, to wit: the book which shows the history of the various cars, and the time of the placing upon the system of new cars.

Adjourned until 3.15 o'clock p. m., Friday, November 25, 1887.

FRIDAY, *November* 25, 1887—3.15 p. m.

Present: Mr. Dickson, for complainants; Mr. Johnson, for defendants.

Mr. GOODMAN, having been recalled, was further examined as follows:

By Mr. DICKSON:

Q. What is the character of repairs required to keep a sleeping car in good order and condition?

A. Commencing with the inception of a car on the road new, it requires what is termed ordinary or minor repairs for a period of about three years. After that it has to have, to put it in first-class condition, general repairs—that is, renewal of worn-out parts, as well as renewal of paint, varnish, etc.

Q. Please specify the repairs of each class and give an estimate of their average cost?

A. Five months after a car has been received, it requires what is

termed minor repairs, which means an expenditure of any-
501 where from $400 to $600. That would be in tightening up, renewing worn-out parts of trucks, as well as touching up the silver where that is worn, and maybe a little upholstering, renewal of carpet or oilcloth, and varnishing, cleaning down and varnishing. The next time a car requires shopping would be about seven months later. You would have to go through a little more extensive repairs that time, and it would involve an expense of about $800, and this same class of repairs and expense would follow with the third and even with the fourth shopping—either the fourth or fifth, depending altogether on how long you have run it between the third and fourth.

You have then got to give the car what is known as general repairs. If a car was properly constructed with heavy timbers and good frame in the first place, you may get through with general repairs upon about $3,000; but with light frames it is often that an expenditure on the third and fourth year will go to as much as $7,000 per car. We have had some, and even those were very good frames, upon which we have expended as much as $11,000 to put them in first-class condition after four years of service.

Q. Do the ordinary repairs continue to be necessary?

A. The ordinary repairs continue to be necessary continuously. In fact, a car never is without a requirement in some part or the other; so that not only are repairs done upon that car while it is being shopped or in the shop, but while at stations; every time a car makes a trip it has to undergo a certain amount of repairs to put it in what is termed safe running condition, so that the
502 railway companies will accept the car for that trip over their road, and even in the short progress of 300-mile runs it is treated at each end of the line in the same way.

Q. What is the average of these annual repairs, and what is the average of the extraordinary repairs within those two to four years?

A. The average cost of the repairs, as we have prorated it in accordance with the mileage made, is about three cents a mile in later years, and prior to 1876 it would average a little over four cents per mile. So that you take a car with a performance, say eight years of service, the average cost of maintenance of that car will be $2,500 in round figures per year.

Q. What is the average mileage run by a car a year?

A. About 8,000 miles, although in later years, since 1880, the average goes above 8,000 miles. It is nearer 11,000.

Q. Was there any difference in the average cost of keeping the 119 cars originally received from the Central Transportation Company in repair, and the average cost of keeping the present style of the Pullman car in good order?

A. The average was the same, although those cars on account of their inferior construction, light frames, required more extraordinary or general repairs or shopping; but owing to the increased beauty, as you might term it, of the cars—the higher grade of finish—the average cost of the present car, and it is simply on ac-

ınt of finish and elegance, is about the same as the average cost of repair of the old one.

Q. Was there any difference, and if so, what, in the average life of the old cars and of the present cars?

A. The 119 cars, the average life of those runs nearly seven years, ıile the average life of the present standard of cars will come arer fifteen years.

Q. To what is the difference to be ascribed?

A. The difference is all on account of the original build. That in the old cars, or the 119 cars, they were all light frames, light ls and stringers, so that we had, in giving general repairs, noth- g substantial to build to. With the present cars we have all avier sills, and in fact the cars that were built twelve years ago e just the same weight of sills that we are putting in now, so that have the foundation to build on cars built since 1870 that we ıd not in those.

Q. What do you mean by the average life of a car?

A. The life of a car is determined, as a rule, by the railway com- ıny's objecting longer to run it. It might be fit for some local ns, but on account of the style, on account of its creaking, groan- g and riding qualities, they raise objections and insist on the com- ıny removing that car and substituting a more modern car satis- ctory to themselves and to the traveling public.

Q. Do they become unsafe, or make such a noise as would lead ıssengers to think them unsafe?

A. They do, and in my experience as superintendent I have many letters from passengers complaining, not only of the riding qualities, but of the loose joints and motion of the cars, so that they were unable to sleep, expecting every minute ıat the car, in taking a curve, would let one side of it out.

Q. In speaking of the cost of repairs at three cents a mile, did you ıme to any arrangement, and if so, what with the Pennsylvania ailroad Company in regard to the repairs of cars? What was our bargain under the original contract of 1870?

A. In 1870, our original contract was that the Pennsylvania rail- ad maintained and renewed: but in 1877, Mr. Scott then claimed, ving to their limited shopping facilities, that we must maintain ır own cars, and then at that interview offered to pay us, if we ould maintain the cars, at the rate of four cents a mile. The uestion was put to me by Mr. Pullman, if I could do it. I in- rmed him I could. At the same time he referred to the clearing- ouse statement, which was then costing the Pennsylvania railroad ur cents and, I think, seven-eighths per mile. That ended the gotiations. Mr. Pullman refused that year, but a year afterwards d enter into an agreement with the Pennsylvania Railroad Com- ana, Mr. Scott, the president, and they were to put these cars all in rst-class condition under the contract, and as they came out of the op, acceptable to inspectors that were appointed by the respective mpanies, the Pennsylvania Railroad Company and the Pullman ompany, they were then transferred from the maintenance to the ileage basis, and from that until the termination of the contract

they paid the rate of three cents per mile for each mile of cars run.

505 Q. What percentage would have been necessary to have provided for a renewal of the old cars after they had ceased to be roadworthy, and what percentage is now necessary?

A. I would say with those cars we should, as a proper business precaution, have provided ten per cent. as a renewal fund. With the present build of cars, my judgment says six per cent. should cover it.

Q. Is that in addition to or exclusive of the renewal of repairing necessary to keep the cars in good order and condition?

A. That is entirely exclusive of cost of renewing and repairing the cars.

Q. Do you know what the general opinion is upon that subject among experts?

A. It varies; but the general opinion is about as I have stated it, although there are isolated cases where a mechanic will get some individual car that he has kept up under his personal supervision, having originally a good frame to work on, and absolutely kept that car in what might be termed safe, good running condition for twenty years, where others will simply claim that they cannot keep even a freight car in proper condition or good running condition more than ten years. Our experience, which is clearly demonstrated by the cars themselves, has been that it is less than fifteen years with the present standard, and it is not to exceed eight years with the old cars.

Q. Have you present in your mind individual instances in which your cars have lasted longer than fifteen years?

506 A. Yes, sir. In the case of the Pioneer, which is one of the first cars that Mr. Pullman built, that car is in good, safe condition today, and my recollection is that it was built in 1865.

Again, in the case of one of the Central Transportation cars built in 1869, at Columbus, being No. 91, I think that car is today in safe condition, although it has not performed anything except, what might be termed, emergency service since 1877.

We have two other cases; two cars that were removed from the Cincinnati, Hamilton and Dayton—the old numbers were 106 and 107—that we remodeled, turning them into what is known as excursion cars; but in doing that it went very much above our estimate, and, if my recollection is right, they cost us about $9,000 apiece to remodel and put in what we call first-class condition.

Q. In making up your estimate of the average did you take those exceptional cases into account?

A. Yes, sir.

Q. From how large an observation is it that your judgment is formed? How many cars have been coming under your observation from year to year for the last fifteen years?

A. In starting we had only the cars of the Central Transportation Company. Then the Pullman Company built cars as fast as they could get them from the various shops—everywhere that we could contract, so that at the end of 1870, I think, we had about 100 to

119 cars. We kept on increasing a little more rapidly, and borrowing cars from other divisions, because the Pennsylvania rail-
507 road had commenced to condemn cars in 1870, and they condemned a little faster than we could supply them; so that I have had in my charge that number up to 375 cars that I was responsible for the operation of, as well as their maintenance. My estimate was made in the year that some of these extraordinary repairs did not come in. The estimate that I refer to from the clearing-house statement was 1884's basis. The average cost of that year was, I have stated, $2,500 per car for maintenance.

Q. When you first became acquainted with the Pullman Company you only had the Central system under your charge—that is, you individually?

A. That is all. I only had, when I first commenced, the Pennsylvania system and what is known as the New York and Washington air line, but later in the season I took charge also of the Baltimore and Ohio system.

Q. When did you come to have general superintendence of all the cars of the Central Transportation Company system?

A. In 1875.

Q. How many was the Pullman Company then running?

A. I should say in round figures about 250 cars.

Q. Are you now in general charge of the whole system?

A. I am not. I have no charge of the maintenance or operation of the company's cars, as I was transferred or promoted from my position as eastern general superintendent in September, 1886, to that of second vice-president in charge of construction. In
508 that I also, of course, come in charge of repairs as well as construction, but only in what is known in our company as construction shops.

Q. How many cars have you now in your system?

A. Over 1,300.

Q. Are they all undergoing repairs in these shops in your charge?

A. No, but a small portion of the 1,300. They are undergoing repairs at every place that we can get the work done; not only in our company's repair shops, but in railroad companies' shops and contract shops.

Q. And these estimates, which you have given, are based upon your experience down to this day in your different capacities in connection with the company?

A. Yes, sir.

Cross-examination by Mr. JOHNSON:

Q. What books have you here?

A. I have but one book, and that is the history of the 119 cars, giving dates that they were originally placed in service, by whom built, and a general synopsis of what they have undergone up to the time of their condemnation and settlement. A synopsis is given of No. 1, and they run through in the same way.

Q. This is the book which gives the history of the 119 cars?

A. Yes, sir.

Q. This book I desire, so that I can put upon the notes that history. Where is the book which gives a history of the cars
509 which you have said are substituted cars for the 119? Is that here also?

A. In all probability you will find a history of those cars in this book.

Q. Please turn to No. 1 and read its history.

A. "No. 1, 'Cresson,' built by Murphy & Allison, assigned to Pennsylvania railroad March 3, '59, a silver palace car, original name 'A;' was rebuilt from floor up at Altoona shops, Pennsylvania railroad, and came out September, '68, as silver palace car, named 'Cresson.' Ran in Chicago, through line, until August 21, '70; was shopped at West Philadelphia shop for painting, reupholstering, etc., coming out September 19th, and going into the New York and St. Louis line via Crestline. When that line was discontinued it then was placed in the local line on Pennsylvania railroad, where it remained until July, '73; was chartered to Haight & Company's circus until October 24, '73, then idle until April 20, '74, when it was condemned and settled for."

Q. How much was got for it?

A. $7,000.

Q. You have spoken of cars 106 and 107. Let me read your note upon that subject. "This car was built in the shops of the C. H. & D. Company, Cincinnati, Ohio, a silver palace car, delivered September 14th, '69, and run in the Cincinnati and Chicago line by the way of Lima, until that was discontinued, and then by way of Richmond, was transferred to the Southern division May 1st, '71. Received back June 30th, '72, when it commenced running on
510 the Cincinnati and Chicago line. Was shopped at Cincinnati August 18th, '73; out June 1st, '74; remodeled into an open Pullman car. Has since run in the Cincinnati, Chicago and Detroit lines. Shopped at Cincinnati September 9th to November 27th, '75—10, 28."

The WITNESS: That refers to the class of repairs that it was to get.

Q. I proceed: "Again, at Cincinnati, August 24th to September 7th, for 11 and 27. Transferred to construction department at Detroit 12, 17, '78; received back June 3, '79, and transferred to Chicago division. Came from construction department June 30th; remodeled to a hunting car; name, Izaak Walton." Where is that car now?

A. I can't tell you just what part of the country it is in.

Q. Is it in service?

A. Yes, sir.

Q. Why did you put it in Exhibit F, among thirty-seven of the cars which were stored at Altoona? In this connection please look at Exhibit F.

A. I couldn't tell you that.

Q. You are the man that got up that Exhibit F?

A. I am not the man that printed it.

Q. Please turn to the original that you did get up, and let us see whether it is the printer's fault, or yours, or somebody else's.

A. I haven't the original.

Q. What has become of the original?

A. I haven't the least idea now.

Q. Whose handwriting was the original in?

511 A. I think it was in my assistant's handwriting—Mr. J. W. Smitley.

Q. Let us see how accurate this list is in another respect. Let me read you the history of 107.

A. That would be the same as 106.

Q. Let me get it, however, upon the record in order that we may be sure we are right. "This car was built in the shops of C., H. & D. R. R. Co., at Cincinnati, Ohio, a silver palace car, delivered September 14, '69, and assigned to C., H. & D. R. R., and run in the Cincinnati and Chicago line, by way of Lima, until that was discontinued, then by way of Richmond; was transferred to Southern division May 1st, '71, and received back June 30th, '72. Commenced running in the Cincinnati and Chicago line, via Richmond. Shopped at C., H. & D. shops, Cincinnati, July 28th, '73; out June, '74; remodeled into an open Pullman car. It has since run in the Cincinnati, Chicago and Detroit line. Shopped Cincinnati September 9th to November 27th, '75—10 and 28. Transferred to construction department at Detroit, 12, 17, '78. Received back June 3d, '79, and transferred to Chicago division. Came from construction department June 3d, '79; remodeled to hunting car; name, 'Davy Crocket,' plan 71, diagram 300." That car is still running in the service of the Pullman Company?

A. Yes, sir.

Q. And your list, Exhibit F, is inaccurate in stating that that was one of the thirty-seven cars at Altoona?

A. It is.

512 Q. That car is actively in service at the present time, is it not?

A. Yes, sir.

Q. How much do you say it cost to repair?

A. My recollection is about $9,000.

Q. When was the last repair of the $9,000 put on it?

A. Coming out June 3, 1879.

Q. It does not appear to have had any repairs done to it since then, from your history?

A. It has, all the same, but not from this history.

Q. Is there another history?

A. The current history of all live cars is in another book.

Q. That history comes down to when in the book before you? How late does that book come down?

A. I should say this came down to about 1880.

Q. What makes you think it does not come down later than that?

A. It may have in some particulars and some cases.

Q. Whose handwriting is that?

A. This is in the handwriting of one of my clerks, named Richard Graham—part of it.

Q. The earlier part?

A. The earlier part.

Q. The later part is in whose handwriting?

A. I see but two handwritings here. The first is in Graham's writing, and the later, or some other parts, are in Mr. Sims' handwriting.

Q. What is Mr. Sims' full name?

513 A. J. H. Sims.

Q. He is at present in the employ of the Pullman Company in Philadelphia, is he not?

A. No, sir; at Jersey City.

Q. When did he go to Jersey City?

A. I think in 1883.

Q. What makes you think that he did not keep that history up until he left, and that the book stopped in 1880?

A. For the simple reason that the pages are well filled in each case and no more room; therefore it is transferred to a new book.

Q. Where is that new book?

A. That is in the division superintendent's office.

Q. In whose charge here?

A. In charge of the superintendent of the Central division.

Q. You continued in charge of that division how long?

A. To 1885.

Q. That book was under your charge until then?

A. Yes, sir.

(Mr. Johnson calls for the book containing the balance of the history of these cars.)

Q. Look now through that book and state what your best judgment is as to the last date in it.

A. The last date that appears to be entered in this book is January, 1882.

Q. So that we may take it, that book brings the history down to 1882?

A. Of some of the later cars.

514 Q. How is it that you did not bring me the book that gave the whole history of the cars?

A. This does give the entire history of the 119 cars from the time of their inception until they were condemned, with the exception of the cars that are now in existence.

Q. How many of the original cars are now in existence and in service?

A. I think four cars.

Q. What are the other cars besides 106 and 107?

A. No. 86. No. 91 can hardly be called in service, because that was condemned a number of years ago by the Pennsylvania railroad.

Q. What has become of 91?

A. It is stored at Pullman, Illinois.

Q. Are you sure of that?

A. From my personal observation inside of thirty days.

Q. You saw it stored at Pullman?

A. Yes, sir.

Q. Then it never was at Altoona, as is stated in "Exhibit F"?

A. It was at Altoona for quite awhile, and was taken away from Altoona on account of its being in pretty good condition; owing to the rush of travel we had to get everything that could turn a wheel, and No. 91 was one of the best ones, and therefore it was thrown into emergency service, and afterwards transferred to Chicago, or the Chicago works, where it has been stored ever since, although it has performed maybe a trip or two to some of the fairs each year since it has been there.

515 Q. Then, when the tender was made of thirty-seven cars, including No. 91, as being at Altoona, in point of fact, No. 91 was not at Altoona, was it?

A. No, sir; I think the car had been sent to the Pullman works to be stored there.

Q. Was not that running on the Pennsylvania railroad as late as October, 1885?

A. Yes, it made a few trips in 1885, on the Pennsylvania railroad, and also a few trips on the Atlantic Coast line.

Q. I now read the history of No. 91: "This car was built by the C. C. & I. C. railroad, Columbus, Ohio, a silver palace car, delivered June 25th, '69, assigned to Pennsylvania railroad. Commenced service on the New York & Louisville lines. From May, '72, to September 12th, '72, it was running between St. Louis, Cincinnati & Chicago, when it again commenced running on the lines of the Pennsylvania railroad. It was transferred to construction department, April 26th, '73; received from construction department December 30th, '73—remodeled into an open Pullman car. Shopped at Philadelphia, October 26, '74, to November 14th, '74, for varnishing, etc. Again, at West Philadelphia, December 13th, '75, painting, etc.; out March 14th, '76. Again, West Philadelphia, December, 26 to 30th, '76—11 & 27. Condemned and stored at Altoona, D. N. W., 5, 8, '79. Last service, October, '85. See letter, E. H. G., 6, 26, '86." What is that letter "E. H. G.," which is referred to there?

A. I could hardly tell without referring to the letter; but
516 I should say from general knowledge, that was my notice to the general superintendent, that I had thrown that car into commission on account of some of this emergency of travel.

Q. Take, now, car 86, which was reported in "Exhibit F," to be stored at Altoona, or elsewhere. Its history is as follows: "This car was built by Jackson & Sharp, delivered February 12th, '69, a silver palace car with rotunda vestibule; assigned to P., Fort W. & C. R. R. Co.; shopped at Allegheny November 14th, '70, to February 5th, '71, for varnish and painting. Was shopped again at Allegheny, October 13th, November 21st, '71; out December 21st. Had varnish, etc. Was shopped at Allegheny July 30th, '72, and out September 14th, '72; general repairs. Was shopped at Altoona,

February 24th, '73, on account of wreck on Pennsylvania railroad. Was transferred to Allegheny, March 29th, in charge of construction department. Received from construction department formally May 12th, '74. Remodeled into a single drawing-room car 9. Allegheny, September 7th, to October 20th—11, 27. Again, at Allegheny, May 13th to June 6th—11, 27." What does 11, 27 mean as to character of repairs?

A. It has been so long ago that I couldn't tell you that from memory, and I have no memorandum here from which to state it.

Q. It further reads: "Transferred to mileage basis, May, '83." What does that mean?

A. That is the time it was turned over by the Pennsylvania railroad from the maintenance to the mileage basis.

517 Q. Then you, at that time, accepted that car under an agreement with the Pennsylvania railroad to keep it in repair for three cents per mile run, did you?

A. Yes, sir.

Q. The car being, then, over fourteen years old, and no remodeling appearing ever to have been done to it?

A. You will find notice in February, 1873, on account of a wreck on the Pennsylvania railroad, that car was then transferred to the construction department and really rebuilt. It came out a new car in either the latter part of '73, or the first of '74.

Q. I see that it went into the Allegheny shop department on the 29th of March, and came out on the 12th of May, '74. Was that long enough to reconstruct it and rebuild it?

A. No, sir; the car was evidently lying at the Allegheny shops, which are shops of the railway company, waiting for an inspection and final orders; but I am safe in saying this, because if they had repaired the car at Allegheny there would have been no occasion to have transferred it to the construction department of the Pullman Palace Car Company.

Q. But I think you have not read it correctly. It reads: "Was shopped at Altoona, February 24th, '73, on account of wreck on Pennsylvania railroad. Was transferred to Allegheny, March 29th, in charge of construction department." Is that a subsequent thing?

A. Yes, sir; evidently.

Q. Therefore, after the wreck it was merely shopped and
518 no reconstruction done. The reconstruction, whatever it was, was a year later, when it was sent to Allegheny; is not that so?

Q. Without referring particularly to this, I have 86 in my mind from the time it was received originally, and that the Central Transportation officers and some invited guests took a trip to Paoli in this car, which was then a rotunda car, along with its mate, No. 85; that it did run as a rotunda car for at least three years, and on account of its wreck, it being wrecked or damaged on the Pennsylvania railroad, it was entirely rebuilt and renewed prior to '75, and came out what we term a plan 26 car, but which is ten sections

drawing-room and a state-room, which is a plan entirely different from its original construction.

Q. You have spoken about some arrangement with the Pennsylvania railroad as to a mileage basis of three cents per mile run. Was that to include accidents?

A. No, sir.

Q. Then, if they were injured by accidents, the Pennsylvania railroad had to see to the repairs?

A. Either the Pennsylvania railroad, or the road on which the accident happened.

Q. Then this car 86 was not at Altoona, as "Exhibit F" states?

A. No, sir.

Q. But it was running on some railroad in June, 1886?

A. It was, to the best of my recollection.

Q. On what railroad was it running?

A. On the Pennsylvania railroad.

Q. Is it still running there?

519 A. It was in 1885. It was up to July, 1886. I cannot speak intelligently since that time.

Q. Was it engaged in doing first-class business?

A. It is running, or was running on some of the local lines. That is a very good car.

Q. I now come back to this substitution business, and will take the cars up seriatim. What car do you say was substituted for car No. 1?

A. It would be impossible to state what car was substituted for each individual car of the 119.

Q. Why? Do you mean to say, that when you made up this second head of Exhibit F, you lumped the thing, and did not attempt to trace out car for car of substitution?

A. No, sir; I took them up in this way. We were very short of cars to operate the business, and, as stated before, we were getting new cars built by the Pullman Company at the various shops as fast as possible. They were placed into the most important lines as fast as they were received from the construction department, and at the same time, they may have been in cases, run a year before that individual car took the place of one that the railroad company even condemned at that time; so that the question of substitution is taken from the dates in which the cars were actually received on the lines covered by the Pennsylvania railroad and the Central Transportation Company, and in that manner we determined which car was a substitute.

Q. If there was a substitution of one car for another, it

520 must have been because car number so and so was substituted for car number something else, was it not?

A. It should be.

Q. I want you now to take that book which you have before you—which was the book from which you made up Exhibit F, was it not?

A. Not altogether.

Q. What other book did you make up Exhibit F from?

A. From the records of dates in which we received the cars and also the reports of earnings, and the lines on which they were running.

(Mr. Johnson calls for all these data thus particularized by the witness, and for all other data from which he made up Exhibit F.)

Q. Turn now to the book which you have before you, and tell me from that book which car you say was substituted for car No. 1?

A. I could not do that without running, probably, through the whole of this document.

Q. That is exactly what we will have to do, as I wish to examine you in reference to all these cars. My object is to show that there was no such substitution as you have testified to, and as is stated in Exhibit F, and in order to accomplish that object, I wish to cross-examine you with all your original data from which you made it up, before you.

A. As far as that is concerned, it would be impossible for me at this date, with the force that I had then of clerks, who are now out of the service, to get up that data—furnish you with those original papers.

521 Q. Still there must be some original papers from which the data were got up, and I want you to enable yourself to answer what car was substituted, in your judgment, for No. 1, and what for No. 75, for instance, and what for others.

A. I can do that from this record. No. 122 was substituted for No. 1.

Q. I see that No. 1 was running in the Pennsylvania railroad service until July, '73; that it was running with Heath & Co.'s circus until October, '73, and that it lay at Philadelphia until the 20th day of April, '74. I see that No. 122, which you say was substituted for that car has this history?

A. It was its substitute.

Q. I do not see the distinction. I will read you the history of 122: "This car was built by the Pittsburgh, Fort Wayne and Chicago railroad at Fort Wayne, delivered March 31, '70, a circular-end rotunda car; assigned to Pittsburgh, Fort Wayne and Chicago railroad, and commenced service in New York and Chicago line, named 'Waverly.' Shopped at Fort Wayne April 19th to June 2d, '71, for varnish, replating, and reupholstering, etc.; Allegheny, January 8th to February 8, '72, varnish and reupholstering, etc.; Fort Wayne, June 21st to July 1, '72, varnish, etc.; Allegheny, October 3d to 27, '72, varnish, etc.; Fort Wayne, November 21, '73, to February 14, '74, general repairs. It has always run on the New York and Chicago line: Shopped Fort Wayne, April 2d to August 6th. Lobby changed to L. D. room. Transferred to mileage basis May 1, '82. Stored at Altoona, October, '82, unserviceable. Used in service Irish Knight Templar excursion August, '83,

522 to San Francisco, and again stored Altoona, September, '83."

May I take it that car 122, which you tendered to us as a substitute for No. 1, was actually stored at Altoona at the time that

you made the tender, and had been stored at Altoona for nearly three years?

A. It looks that way.

Q. And that was one of the cars you wanted us to take as a fit and proper substitute?

A. I think it was more than an ample substitute.

Q. And that car was a car which went into the service on the 31st of March, '70—about three years and a half before No. 1 went off the Pennsylvania railroad line, was it not?

A. Yes, sir.

Q. That is your idea of a substitute?

A. Yes, certainly. We commenced to substitute or provide substitutes for the cars of the Central Transportation Company the moment that lease was made.

Q. That is, you put on more cars?

A. To take the place of these as the railway company condemned them.

Q. Do you mean to say that you put the car on in March, 1870, to take the place of a car that was actually running in the service, down to July, 1873?

A. In the absence of any particular car, these new ones as they came into service from '70, until there had been enough come in to take the place of all of the old cars of the Central Transportation Company—those were the ones that were considered the proper cars as substitutes for those, and were applied and designated as
523 such in the order that they came into the service new, commencing with 1870, and in all probability with the lowest number, and running up.

Q. Do you mean seriously to tell us that No. 122, which was in the service nearly three years and a half cotemporaneously with No. 1, was treated as being put into the Pullman service as a substitute for No. 1?

A. It might not have been as a substitute for No. 1 in 1870, or considered as such; but it was a substitute for one of the cars that was condemned at that time, and I do not see where it makes any particular difference whether 122 was a substitute for No. 1 or for No. 11, or any other number.

Q. I will not argue the law with you. All I want is to get at your idea of substitution. Is this a fair sample brick of the substitutions in other cases—the one that I have just put to you?

A. Some may come just at the time; but it is impossible in the operation of the sleeping-car business for any one to say that car No. 122, for instance, or No. 315, was a substitute for any particular car. The lines run in common. We had to use everything that was possible to use, and there was only one way to treat that. That was to take that number of cars that were received first, built by the Pullman Company as substitutes for those old cars, as fast as the railway company condemned them.

Q. Then, not having No. 1 car to tender in June, 1886, you cast about, and finding that No. 122 car was stored at Altoona as worth-

less you tendered that to us, because No. 122 had gone into the
524 service and continued in the service for about three years and a half cotemporaneously with No. 1; is that so?

A. We tendered that as a substitute for No. 1 for the simple reason that No. 122 is, in all probability, the first new car that was furnished by the Pullman Company, and it was then considered proper to call that a substitute for the first car No. 1.

Q. I see here car 121 and car 120. Why did you not substitute car 120 *and* 121 for No. 1 rather than 122, which was stored at Altoona as worthless?

A They were all built at the same time.

Q. But was there not a difference in the running condition? Were not Nos. 120 and 121 in a great deal better condition than 122?

A. Not a particle.

Q. Read your history of 120 and 121.

A. "120 was built by the Pennsylvania railroad August 20, '70, circular-end rotunda car, assigned to the Pennsylvania railroad. Commenced service in the New York and Chicago line where it still remains. Shopped at Philadelphia February 28th to March 22, '72, varnish, etc. Again at Pittsburgh, December, '72, to January 5, '73, for varnish, replating and silver, etc. At Philadelphia, July 16th to October 14, '73, general repairs. At Meadows, October 16th to December, '74, varnish, etc. Shopped at West Philadelphia, September 7, '77; lobby changed ladies' dressing-room 11th, 12½ and 27; remodeled at West Philadelphia shops, July, '81, to plan 131, a twelve-section and smoking-room car, and transferred to the mileage basis July 23, '81."

525 Q. So that eleven years after that car had been built it was put on a mileage basis?

A. Yes, sir.

Q. That car is running where?

A. I should say on the Pennsylvania lines today.

Q. Why on earth was it that you skipped 120, which was the next one that went into service and that was running on the Pennsylvania railroad, when you made this tender, and tried to palm or put upon us car 122, which was put on later than 120, and was lying at Altoona stored as worthless?

A. Simply because 122 was the first car received. It was received prior to 121.

Q. Let me see that?

A. That came out in March, and the other one later in the season.

Q. Then you remembered 120 which came out last before, did you?

A. Certainly. It might have been a difference of six months in building, longer than 122. As far as the cost of the cars was concerned, to show you that there is no difference in the original construction and the cost of the cars, 122 and 123 cost very much more money than 121.

Q. I see car 121 was transferred to the mileage basis December 9, '79. Where is that running now?

A. In all probability, on the Pennsylvania railroad today.

Q. Are orders given for those cars when they are constructed—that is, when they are ordered for construction, is there a written order given anywhere for the construction?

526 A. Yes, sir.

Q. Does that order contain the name and number and destination?

A. It contains name and number, but not destination, unless it is specially designated as a car to be assigned to some railroad company.

Q. Where are those orders kept—in Chicago?

A. They are kept at the Chicago works.

Q. What became of car No. 1?

A. It was sold to the Pennsylvania Railroad Company.

Q. About when?

A. It is stated in that book. It has been read already.

Q. Do you know what it was sold for?

A. $7,000.

Q. What was done with it after it was sold? It was rebuilt, was it not, into a gunners' car, and is now running?

A. No, sir.

Q. Are you sure of that?

A. I know it was not.

Q. Who was it sold to—Mr. Gwinner, wasn't it?

A. It was sold to the Pennsylvania railroad for the use of H. W. Gwinner as traveling auditor.

Q. And it is in use now to this day?

A. No, sir.

Q. When did it go out of use.

A. Several years ago—I think the year that Gwinner retired from the Pennsylvania railroad.

Q. About when was that?

A. Somewhere about 1878 or 1879. I can't say exactly, but I think it was 1878.

527 Q. Look at Exhibit F, and state what you have put as a substitute for car No. 75.

A. No. 123.

Q. I think you are mistaken. Look at No. 125.

A. I notice the pencil figures are a little blurred, and it shows 123. It may be 124.

Q. Is it not a fact that, as you originally prepared your list, you put 125 as the substitute for 75, and that then, upon examination, you found 125 was burned, and would not do as a substitute, and cast about for what would do, and chose 124?

A. I took those simply in the order in which those cars were received by us—new cars from the construction department—and then used those as substitutes in as near as possible numerical order.

Q. But did you not, in the first instance, put as a substitute on your list, which accounts for the blurring, for No. 75, No. 125, and then examined and found it was burnt, and cast about for another

number, and then chose a number which now appears blurred on your list?

A. No, sir, I simply took those, as I have stated, in that order.

Q. Don't you think that number is 124?

A. That number appears as 124 on my copy.

Q. Or 123?

A. It appears as 124. Above that is 123.

Q. Which is which—which is the substitute—123 or 124, for No. 75?

A. It is impossible for me to say. This has not been in my possession for two or three years. I don't know anything about it.

528 Q. In whose handwriting is the original of which that is a press copy? Did you not say Mr. Smitley's?

A. No, sir, it is not Mr. Smitley's writing.

Q. Whose do you think it is?

A. That writing on the first sheet is Samuel Wilson's.

Q. Who was he?

A. He was a stenographer in my office—one of my clerks; but inside doesn't look like either one of those.

Q. Is it not a fact that the original of that is in the handwriting of an entire stranger to your office?

A. No, sir; I believe I am safe in saying, looking down the list, that that is in the handwriting of Samuel Wilson.

Q. Is it? Look and see if it is not a fact that the original of that press copy is in the handwriting of a person outside of your office?

A. I do not think so. I think that is Wilson's writing.

Q. Who is Wilson?

A. As I have just stated, Wilson was the chief clerk in my office. He is now in the New York office—still in the employment of the Pullman Company.

Q. What is the date of that paper?

A. There is no date to it.

Q. When do you think it was got up? I mean when do you think that particular paper was prepared and written—that is, the original of it?

A. In 1885, I should say, in the month of June.

Q. In the month of June, 1885, or 1886?

529 A. 1886.

Q. Was not Mr. Wilson, in the month of June, 1886, stenographic clerk for General Horace Porter?

A. He was not.

Q. What position was he in at that time?

A. He was my assistant in the general superintendent's office.

Q. In Philadelphia?

A. No, sir; in New York.

Q. Who handed you the original of that paper first?

A. The original data of this paper was gotten up at my house in Brooklyn—I was on my back sick at that time—with Wilson and Smitley, and with the books brought there then and other data

which I had from time to time in my memory. I prepared a draught showing the cars as they were received on the Pennsylvania lines, furnished by the Pullman Company—furnished that list in that way in that order. That was a rough draught. I was unable to leave the house, and put that in Mr. Smitley's hands to take to my office, there for Mr. Wilson to prepare that statement and submit it to our counsel.

Q. Had it been submitted to counsel before it came back to you—the original of that paper?

A. I think not.

Q. Do you think you saw it before it was submitted to counsel?

A. I must have; certainly.

Q. Who brought the original of the paper to you?

A. I think Mr. Smitley brought it to me.

530 Q. Then Mr. Smitley was really the man who prepared the paper, was he not, from the original data?

A. He and I together. He prepared it under my directions.

Q. You were homesick, and he was preparing it at your home, was he?

A. Yes, there is where it was prepared.

Q. At your home?

A. Yes, the most of it.

Q. Were the books taken to your home?

A. The data.

Q. What data?

A. The data of these books here.

Q. This book itself?

A. Yes, sir.

Q. What other books, or data from what other books?

A. We didn't have anything else but that.

Q. In order to get at the substitution, the only book you needed was the book that I have now before me, headed Pullman Palace Car Co. Central division, description of cars?

A. Yes, that is all.

Q. All the data was prepared from this book?

A. Virtually all; yes, sir.

Q. So that all that you have testified to concerning the substitution of cars was taken from this book?

A. And memory.

Q. What did your memory aid you with regard to any of these cars, one being substituted for the other?

531 A. At the time that these cars came on to the road there was no question, except in a few isolated cases, that any one car was treated as a substitute — another.

Q. There was no such question?

A. No, sir. You can refer and find in that book where these particular numbers were built to take the place of some particular car, and that book will tell you. Now outside of that, it was simply treated as a matter where the cars came on, and to treat them in the order in which they were received.

Q. Then, when you said one car was a substitute for another, did

you arrive at that by considering when Pullman cars came on the road, and in the order of their coming on you would treat them as substitutes for our cars, whether our cars continued in the service or not? How is that?

A. Well, that is about the amount of it.

Q. Then, though it may well have been the fact that our cars continued running in the service for years—that is, our cars numbered in the latter part of the second part of Exhibit F, you, when you came to prepare this paper, treated other cars as their substitutes, though those other cars had been running for years cotemporaneously with our cars; that is about it, isn't it?

A. That is about it—yes, sir.

Q. So that, without going into detail, it might well happen that over and over again, cars which you treated as substitutes for our cars, were running for years in the service cotemporaneously with our cars?

A. Yes, that is a fact.

532 Q. Have you the history of the cars Paoli, Etna, Bolivia and others?

A. Yes, sir.

Q. State the history of the car Paoli?

A. At page 321: "Received by transfer from Southern division December, '79; that remained in line 16, New Orleans and Washington, until May, '80, when it commenced service in Central division."

Q. Where is the Paoli now?

A. I do not know just where it is running; it is somewhere.

Q. It is somewhere on the line, or is it housed?

A. It is very hard work to say just where it is, because cars, since they have been on the mileage basis, are liable to go from one division to another.

Q. I see that that car commenced service December 27, '71, and was only transferred from the Southern division in December, '79; so that it had had eight solid years of use in the Southern division before it ever came into the Central service at all, had it not?

A. Yes, sir.

Q. Look at your paper and state what you considered as a substitute for that car?

A. No. 90.

Q. I read to you the history of No. 90:

"This car was built by Jackson & Sharp, delivered April 6th, '69, a silver palace car, assigned to the Pennsylvania railroad; commenced service in the New York and Louisville line; was shopped January 14th, '71, for minor repairs on account of wreck on

533 Pennsylvania railroad. Shopped at Philadelphia July 22d to October 23d, '71; remodeled into an open Pullman car; was shopped at Pittsburgh, August 31st to September, '72, for varnish, and was shopped at Philadelphia October 23d, on account of accident. Out November 11th, '72. Was shopped at Pittsburgh May 12th, to July 9th, '73, for varnish, replating silver, etc. It always run in the Pennsylvania through and local lines. Condemned

and lay at Altoona until February 23d, '75, when it was settled for."

So that you, in this calculation of substitution, gave to the Central Transportation Company as a substitute for a car which was disposed of February 23, '75, the Paoli, which was, after having been eight years in the Southern service, put in the service December '79?

A. Yes, sir.

Q. Won't you tell me by what rule of thumb or otherwise you hit upon the Paoli that was running for four years after the car No. 90 was condemned in the Southern service as a substitute?

A. You will find, by taking the list of what we have named as substitutes, that those cars are in the order of their receipt on the lines operated and known as the Central Transportation Company lines, and that in case of the Paoli, that being a Pullman car, was virtually reconstructed in order to make it entirely acceptable to the Pennsylvania railroad; otherwise it would not have been received, and therefore, to all intents and purposes, it was treated by them and by us as a new car and fit to take the place of anything. The car still continues to run, maybe not on the Pennsylvania railroad because it is on the mileage basis.

Q. I see no history at all of repairs to that car here. Wasn't she repaired?

534 A. Yes, sir.

Q. Do you know why that history was not kept up?

A. I do not. The history, as far as this book is concerned, is treated virtually the same as a new car, because when we received it—this is from my own recollection—it was, to all intents and purposes, just the same as any new car received from the construction department, and the previous history——

Q. (Interrupting.) No, but the after history, from December, '79. I was referring to the after history of repairs after it came into the Central division.

A. It is probable this is not entered into that book. It has a history, however, the same as any other car.

Q. Where would you find the history of the repairs of that car?

A. You can find those either in the division office or in the general superintendent's office, in Chicago.

Q. Then there are books kept at Chicago, by which, if I take this book with me, I will be able to obtain the cost of the repairs done at various times at the shops mentioned in this book?

A. There should be.

Q. Is there not a book kept somewhere that gives the actual cost of repairs to each car?

A. They give the actual cost of repairs to each car; that is, on the mileage basis, that the Pullman Company are responsible for the maintenance of.

Q. All of them were on the mileage basis after '78, were they not?

535 A. No, sir; some of them run on the maintenance basis. We did not get all transferred until, I think, 1882.

Q. The bulk of them were running from 1878 on the mileage basis, were they not?

A. We commenced in 1878 to put these in shop as fast as the Pennsylvania Railroad Company could shop them, and I think, if my recollection is right, it strung along over three years before we got through with them all.

Q. What is the meaning of that big item in your Pullman reports of nearly $500,000 to the credit of mileage account?

A. I cannot answer that question.

By Mr. JOHNSON:

Q. What do you say was substituted for car 48?

Mr. DICKSON: I do not understand the witness to say that when a particular car of the Central Company gave out, a particular car of the Pullman Company was substituted; but that for any car that happened to give out, the first in seniority added by the Pullman Company was substituted for it.

Mr. JOHNSON: Exhibit F says, enumerating the cars: "All of which cars were by Pullman Palace Car Company, in due course of business, substituted in the place of the following originally demised cars, to wit."

A. Car Arabian was substituted for car 48.

Q. I find the history of car Arabian to be this: "Commenced service February 9, 1871. Remodeled to plan 19½ at Detroit, May 3, 1878. Received by transfer from Boston division, February 1, 1879. Out eastern railroad shops, November 9, 1878; varnish, etc., minor repairs; see our letter to E. D. M., 3-12-'79, and his endorsement on same March 21, 1879." That was received the 1st of February, 1879. You put it as a substitute for car 48. What has become of that car Arabian at the present time?

536

A. It is still running.

Q. Do you know where?

A. I couldn't state.

Q. Where was it running when you knew of it last?

A. I think the car, when I last recollect it, we had it for a while on the New York and Chattanooga line and Shenandoah Valley, and whether it was there last or on the line between Washington and Atlanta or New Orleans, I cannot tell.

Q. When did it get off the Pennsylvania, the Central division, and on to these southern lines?

A. As it was on the mileage basis, it would run promiscuously. It may run to Chicago over the Pennsylvania and get to New Orleans over these other lines.

Q. It was a wild car, was it?

A. Yes, sir.

Q. When did it become wild?

A. The Arabian was a wild car when it was received on the Pennsylvania lines.

Q. Then it never was regularly in duty? It would go in and go out of the Central division, would it?

A. It remained in the Central division from the time of its receipt in the Central division up to the present.

537 Q. I thought you said it went down into Chattanooga?

A. That is all the same, the Central division.

Q. I see no history of that car as regards its repairs. Will that other book furnish that history?

A. I should say it would.

Q. Tomorrow I will want you to bring the other book containing the later history and any data that you may have which will help you in answering these questions, and any books which furnished the original data from which you made up that. That, you say, was a substitute for car 48. I find the history of car 48 to be this: "This car was built by Bolton, D. & Company, delivered February 27, 1865, and run on Pennsylvania railroad. Shopped September 1, 1868, at West Philadelphia for remodeling. Came out December 15th, with iron columns, etc.; named Wyoming. Run between Philadelphia and Renovo until March, 1871, when it was condemned and settled for." So that the car Arabian, which was built in 1871, and only brought into the Central division in February, 1879, was treated by you as a substistute for car 48, which was condemned in March, 1871. What was received for that car 48?

A. According to this list, $7,000.

Q. What was received for car 90?

A. $7,000.

Q. Now the car Bolivia you have treated as a substitute for car No. 2?

A. Yes, sir; No. 2.

Q. Now I find the history of the car Bolivia to be this: "Assigned wild." What does that mean?

538 A. That is wild. She never was on the maintenance basis. It was always wild or on the mileage basis.

Q. "Commenced service with the Pullman Palace Car Company August 21, 1872." They could not have built it then, could they, from that?

A. Yes, built by our shop; the Detroit manufacturing works.

Q. "Rebuilt at Detroit car and manufacturing works, August 21, 1872, from old Hannibal and St. Joe's car No. 4." Then that was an old car rebuilt, was it not?

A. I have no recollection of that until the time it was received by us.

Q. But this history means that it was rebuilt in 1872 from an old car?

A. That is what it says.

Q. "Received from Southern division November 13, 1879. Shopped last at W. and A. railroad, Atlanta. Out November 14, 1878." Now that car, which was an old car that had been running on the old Hannibal and St. Joe railroad, and was rebuilt in 1872, did not come into the Central division until the 13th of November, 1879, did it, from this history?

A. It did not.

Q. And you put that as a substitute for car No. 2, which has this

history: "This car was built in West Philadelphia shops, by the Pennsylvania railroad, delivered in the fall of 1866, and was shopped at West Philadelphia 1868, and remodeled into silver palace car, coming out named Hiawatha, March 4th, 1869, and run in
539 the New York and Cincinnati line. In Pittsburgh shop, Pennsylvania railroad, October 19, 1870, for painting and minor alterations. Came out, no name, and run between Altoona and Iron City. Was transferred to Chicago division June 18, 1871. Received back May 5, 1872, and run on the Pennsylvania Railroad lines until November 13, 1872, when it was condemned." So that the car Bolivia, rebuilt in the way we have stated, which did not come into the service until the 13th of November, 1879, you treated and tendered as a substitute for car No. 2, which went out of service on the 13th of November, 1872, did you not?

A. Yes, sir.

Q. What became of car No. 2? What was paid for it, and when?

A. My recollection is $7,000.

Adjourned until Saturday, November 26, 1887, at 3 p. m.

SATURDAY, *November* 26, 1887—3 p. m.

Present: Mr. Dickson, for complainant; Mr. Johnson, for defendant.

Mr. GOODMAN having been recalled, was further cross-examined as follows:

By Mr. JOHNSON:

Q. You are the gentleman who was delegated by Mr. Pullman to present to the directors of the Central Transportation Company, during your negotiations with them, figures as to the prospective profit under the running of the old and newly proposed lease with the Pennsylvania railroad, were you not?

540 A. Am I under direct or cross examination?

Q. You are under cross-examination now. I will make it as mild as I can for you, however, if you will answer in a congenial whole-souled spirit?

A. I presented those figures; yes, sir.

Q. I have thus far vainly endeavored to find what figures were stated to the board of directors of the Central Transportation Company as the average annual profits of the Pullman Company under the old lease with the Pennsylvania railroad. Will you be kind enough to step into the gap and give us that information?

A. I could not do that from memory.

Q. How close could you approximate, within $400,000?

A. Yes, sir; I could approximate within that.

Q. How closely to accuracy do you think you could approximate?

A. I can hardly say.

Q. Do you think you could come within $200,000 per annum of net profits?

A. Yes, sir; I can come within $200,000.

Q. Could I even get closer to the mark, and say that you might come within $100,000 of the figures that you stated to be the average net earnings under the old contract?

A. For what length of time do you mean?

Q. I mean the profits which you stated to the board of directors to have been made under the old contract per annum?

A. I should say I could come within $100,000.

541 Q. Will you be kind enough to tell me within $100,000 the annual profits which you stated to the board of directors of the Central Transportation Company had been earned under the old contract?

A. I never stated the amount of the annual profits that had been earned under the old contract.

Q. How did you put it? In what manner did you announce to them the fact that there had been profits, and what they had been in the past?

A. The information that I gave was based on 1884's basis.

Q. That had not expired then, when you were giving your information, had it?

A. It had.

Q. Then the information you gave was in 1885?

A. No; I gave approximate figures before that, but definite figures a few days after the 1st of January, 1885.

Q. What were the figures which you gave? These were not approximate, they were actual figures, were they?

A. They were actual figures.

Q. Be kind enough to state within $100,000 what you said to have been the net profits earned in the year 1884, just closed?

A. I am unable to give you an intelligent answer to that in the absence of any data.

Q. Where is the data from which you could give the intelligent answer so much desired to be found? Is it extant?

A. It is somewhere among my private papers.

542 Q. Then you are not able to give within $100,000 those figures. Please hunt among your papers and produce the data which will enable you to answer that question.

A. I can only give this information from present memory. That is, taking the earnings of the cars of 1884 and deducting from those earnings operating and maintenance expense—in other words, all expense necessary to conduct that business, my recollection is we had a net earning of $96,000.

Q. So that your recollection is that in giving to the board of directors the information of what had been the net earnings under the old contract, as well as you can state it, you stated it to them at $96,000.

A. That is my recollection.

Q. What did you estimate to them would be the prospective earnings under the contract that was about to be entered into—the new contract?

A. It would be about the same, unless the business very much increased.

Q. So that your recollection is that you stated to them that under the new contract the net profits, after all deductions, would be about $96,000?

A. That is my recollection.

Q. How many cars did you estimate those earnings upon, or did you make those earnings upon, in 1884, as well as you can remember?

A. I think 192.

Q. Those included parlor as well as sleeping cars, did they not?

A. Yes, sir.

Q. After the new contract went into effect, and the Pennsylvania railroad did its own drawing-room-car business, did you
543 decrease or increase the number of cars running over the system which belonged to the Central Transportation Company?

A. We increased it.

Q. Why, with a diminished business, did you increase the number of cars?

A. You can hardly call it a diminished business, because, by the placing of additional trains on the Pennsylvania system it required more cars, notwithstanding the fact that the Pennsylvania had put on a few cars of their own.

Q. Did the Pennsylvania railroad, after the new contract went into effect in January, 1885, increase the number of trains?

A. Yes, their trains have been steadily increasing, you might say month after month.

Q. With an increase in the number of trains necessarily followed an increase in the gross earnings, did it not?

A. In all probability; yes. It should.

Q. Then, so far as your memory and your knowledge goes, since the new contract went into effect, by reason of the increase of the number of trains, the gross earnings have increased?

A. They ought to; but I have no data, or I haven't looked into that question at all; therefore, I do not know.

Q. Have you any idea of the increase in the number of trains the Pennsylvania railroad made after the new contract went into effect?

A. I couldn't state just how much that would be.

Q. How many cars have actually been permanently as-
544 signed to the service of the Central Transportation system? Understand me: all through, in speaking of the Central Transportation system, to mean those railroads upon which the old lease still operates.

A. The permanent assignments, to the best of my recollection, amount to just 100 cars.

Q. The rest are what you call wild cars, are they not?

A. The fact is that they are all wild.

Q. I use the word "wild," having in my mind a meaning which may or may not be the right one. Please define what is meant by "wild cars"?

A. A wild car is one that is unassigned, running on a mileage

basis; whereas, a mileage car may be treated as a wild car, and it may be treated as assigned to a particular railroad on the mileage basis.

Q. When you said 100 cars you did not mean on the Pennsylvania railroad alone—you understood on the Central division?

A. That is all that is permanently assigned.

Q. Have you got such a thing as a time-table which will show where a car was to run in the future just as a time-table of a railroad will show the hours of departure of its trains?

A. No; we never kept such a thing.

Q. How would you know where your cars were if you did not have something of that sort?

A. We know by the daily reports received from each station, as well as the passing reports from the station, and in addition to that we have the conductor's report, which is the basis of all, giving earnings and mileage.

545 Q. I see clearly how you can locate them by that; but how do the conductors of the cars know where to run them; do they go according to their own sweet wills, or do they go according to a running schedule?

A. No; when a car comes into a station this morning, for instance, it is then booked to go out on a certain road and at a certain hour. That is entered on the bulletin-board, as you might term it, and the conductor is then assigned to that particular run. He takes whatever cars are assigned to that run out on that schedule.

Q. How does the gentleman, who gives him orders, arrive at the necessity of such order; is there not some presiding deity, who, by virtue of some arranged schedule, orders the providence of these cars?

A. If you mean whether a certain car is regularly assigned to a particular run or not, in former times there was, and at the present time there are a few cars on account of their special construction regularly assigned to a particular run; but since we have come to so near a standard, with so many cars it is absolutely immaterial where they are run—whether a car goes to Chicago on No. 9 train tonight, or to St. Louis, because the cars are alike, except as to name and number.

Q. Then it is immaterial whether you run your car in the Central division, or the Southern division, or the Pacific division, or which division you run it in?

546 A. Oh, that makes quite a difference, for the simple reason that there are so many cars assigned to each division, calculating that we furnish each division enough cars to fill all their requirements.

Q. Then there is an assignment of a certain number of cars to each one of those grand divisions?

A. Yes, sir.

Q. And not only is there an assignment of a certain number, but certain specific cars are put into that division; isn't that so?

A. Yes, sir.

Q. So that there is not an indiscriminate interchange of cars between the different divisions?

A. No, sir; there is not an indiscriminate interchange, for the simple reason, the cars are virtually assigned to that division, and superintendents of that division have no authority, unless by special authority from their superior officer, to change a car from one division to another.

Q. Then, when certain specific cars get into a division, they stay there until one of the higher powers of the company orders such cars out of the division?

A. As a permanent arrangement, yes; but superintendents have the authority, in case of emergency or any special service, to run that car, no matter what division, any place in the United States, irrespective of its assignment there.

Q. That is, the superintendent of one division, upon requisition of the superintendent of another division, if he had cars that he could spare, would send them to the other division to meet an emergency?

A. Yes, sir.

547 Q. Then may I take it that there is a very considerable interchange of specific cars that get into the various divisions?

A. More or less; yes, sir.

Q. In the Central division there are 100 cars that stay permanently in it?

A. They stay permanently; yes, sir.

Q. But even some of those 100 cars may from time to time be transferred into other divisions?

A. They may be; but that has got to be by the sanction of the manager of the railway company to which those cars are assigned.

Q. There was a good bit of negotiation between the Pennsylvania railroad and the Pullman Company after the contract was informally agreed upon, but before it was signed, as to what cars should be put into the Central division, was there not—so much negotiation that months elapsed before the lease could be formally executed?

A. No, not in that light.

Q. Where was the difficulty?

A. There was no difficulty. The cars that were running over the Pennsylvania lines in January, 1885, there were no objections to as far as their performing the service, but they objected to some of the cars to be permanently assigned to them under that new contract.

Q. There was a good bit of negotiation before there was an agreement arrived at as to what cars should be permanently assigned?

A. Very little.

Q. How long a time was taken before the agreement was reached?

548 A. It was quite a little while before that was finally put in print; but I think I only had three interviews with Mr. Ely.

Q. Then what made the delay, after the terms had been settled in February, 1885, in the formal execution, until June or July, or possibly August, of the lease itself?

A. I do not know what was the cause of the delay; but it was not on account of the car question.

Q. That was no difficulty?

A. No, sir.

Q. At any rate, there was an agreement arrived at, whether after much or little difficulty, by which certain cars were permanently assigned to the Central division under the new contract?

A. Yes, sir.

Q. One hundred was the number of such cars?

A. Just one hundred. It was afterwards increased probably a few; I do not remember exactly.

Q. How many of the cars thus permanently assigned will I find in this list of sixty-three so-called substitutes? (Handing to witness Exhibit F.)

A. I cannot give you the answer to that, because I have not any data to help me.

Q. Where will I find, and in what shape, the list giving numbers and names of the cars thus assigned?

A. That is matter of record of the Pullman Palace Car Company at their general office in Chicago.

549 Q. According to the best of your recollection, was there a single one of what you have been pleased to call substitutes accepted in that list of one hundred?

A. I haven't the numbers of the cars that were permanently assigned in my mind sufficiently to answer that question.

Q. Is it not the best of your recollection that not one of the famous sixty-three was accepted in that list of one hundred?

A. I do not think there were many of them.

Q. Is it not true that no matter how the result was reached it was a fact that the sixty-three cars which you were pleased to call substitutes, were the oldest and the worst of the cars in the regular Pullman service?

A. They might have been the oldest, but they were not the worst.

Q. I mean the worst of those which were in the regular service, not that were used in times of great emergency to transport excursions.

A. You cannot call them the worst cars for the simple reason that those are virtually our standard cars. These are our standard cars running on the trains today.

Q. Then, let us say the worst of your standard cars. Were not those sixty-three the worst of your standard cars?

A. You will readily see how the Pennsylvania railroad worked in getting at their one hundred cars. They started with the last car that was received, and worked back. In regard to the Central Transportation matter and the substituted cars we had to start with the first received, and work forward.

550 Q. There was nothing to have prevented your giving us a little newer and a little better cars, was there, excepting that you didn't want to do it?

A. Excepting that we didn't want to do you an injustice.

Q. Would you have done us an injustice by giving us newer and

Q. So that there is not an indiscriminate interchange of cars between the different divisions?

A. No, sir; there is not an indiscriminate interchange, for the simple reason, the cars are virtually assigned to that division, and superintendents of that division have no authority, unless by special authority from their superior officer, to change a car from one division to another.

Q. Then, when certain specific cars get into a division, they stay there until one of the higher powers of the company orders such cars out of the division?

A. As a permanent arrangement, yes; but superintendents have the authority, in case of emergency or any special service, to run that car, no matter what division, any place in the United States, irrespective of its assignment there.

Q. That is, the superintendent of one division, upon requisition of the superintendent of another division, if he had cars that he could spare, would send them to the other division to meet an emergency?

A. Yes, sir.

547 Q. Then may I take it that there is a very considerable interchange of specific cars that get into the various divisions?

A. More or less; yes, sir.

Q. In the Central division there are 100 cars that stay permanently in it?

A. They stay permanently; yes, sir.

Q. But even some of those 100 cars may from time to time be transferred into other divisions?

A. They may be; but that has got to be by the sanction of the manager of the railway company to which those cars are assigned.

Q. There was a good bit of negotiation between the Pennsylvania railroad and the Pullman Company after the contract was informally agreed upon, but before it was signed, as to what cars should be put into the Central division, was there not—so much negotiation that months elapsed before the lease could be formally executed?

A. No, not in that light.

Q. Where was the difficulty?

A. There was no difficulty. The cars that were running over the Pennsylvania lines in January, 1885, there were no objections to as far as their performing the service, but they objected to some of the cars to be permanently assigned to them under that new contract.

Q. There was a good bit of negotiation before there was an agreement arrived at as to what cars should be permanently assigned?

A. Very little.

Q. How long a time was taken before the agreement was reached?

548 A. It was quite a little while before that was finally put in print; but I think I only had three interviews with Mr. Ely.

Q. Then what made the delay, after the terms had been settled in February, 1885, in the formal execution, until June or July, or possibly August, of the lease itself?

A. I do not know what was the cause of the delay; but it was not on account of the car question.

Q. That was no difficulty?

A. No, sir.

Q. At any rate, there was an agreement arrived at, whether after much or little difficulty, by which certain cars were permanently assigned to the Central division under the new contract?

A. Yes, sir.

Q. One hundred was the number of such cars?

A. Just one hundred. It was afterwards increased probably a few; I do not remember exactly.

Q. How many of the cars thus permanently assigned will I find in this list of sixty-three so-called substitutes? (Handing to witness Exhibit F.)

A. I cannot give you the answer to that, because I have not any data to help me.

Q. Where will I find, and in what shape, the list giving numbers and names of the cars thus assigned?

A. That is matter of record of the Pullman Palace Car Company at their general office in Chicago.

Q. According to the best of your recollection, was there a
549 single one of what you have been pleased to call substitutes accepted in that list of one hundred?

A. I haven't the numbers of the cars that were permanently assigned in my mind sufficiently to answer that question.

Q. Is it not the best of your recollection that not one of the famous sixty-three was accepted in that list of one hundred?

A. I do not think there were many of them.

Q. Is it not true that no matter how the result was reached it was a fact that the sixty-three cars which you were pleased to call substitutes, were the oldest and the worst of the cars in the regular Pullman service?

A. They might have been the oldest, but they were not the worst.

Q. I mean the worst of those which were in the regular service, not that were used in times of great emergency to transport excursions.

A. You cannot call them the worst cars for the simple reason that those are virtually our standard cars. These are our standard cars running on the trains today.

Q. Then, let us say the worst of your standard cars. Were not those sixty-three the worst of your standard cars?

A. You will readily see how the Pennsylvania railroad worked in getting at their one hundred cars. They started with the last car that was received, and worked back. In regard to the Central Transportation matter and the substituted cars we had to start with the first received, and work forward.

550 Q. There was nothing to have prevented your giving us a little newer and a little better cars, was there, excepting that you didn't want to do it?

A. Excepting that we didn't want to do you an injustice.

Q. Would you have done us an injustice by giving us newer and

better cars? because that is an injustice that we would have submitted to?

A. It might not have been in reality an injustice to the Central Transportation Company, but I do not think it was justice to the Pullman Company to have done so.

Q. Justice to the Pullman Company was better served by giving us the oldest cars?

A. Better served by giving you the cars which you were actually entitled to.

Q. Entitled in the way you have traced your title to those mansions, not in the skies, but on the rails?

A. Yes, sir.

Q. Let me hand you a paper called Pullman's Palace Car Company, Central division, schedule of lines, No. 100, July 5, 1887, and ask you what that paper is and what purpose it subserves?

A. This is what it represents to be; a schedule of lines, giving the line, number, the trains, train numbers, the time of arrival and departure, and the mileage over each of the roads forming that line.

Q. It is one of the official publications of your company?

A. For the guidance of the employés of the Pullman Palace Car Company.

551 Q. Will you not be able by comparing that list of cars in the Central division with Exhibit F, to say whether or not any of the sixty-three cars in that Exhibit F are included in the 100 cars assigned to the Pennsylvania railroad?

A. This schedule of lines has no reference whatever to the cars.

Q. If a car, which has been running in the Southern division, is transferred to the Central division, and after running there a month requires repairs, against which division are those repairs charged?

A. Against the division that that car had performed service in last.

Q. Therefore, if, by chance, a Southern Division car, after running in the Central division one month, required $1,000 of repairs, those repairs would be charged against the Central division?

A. Not necessarily so.

Q. How would that be in fact?

A. The cars, as a rule, are all running on a mileage basis.

Q. Are Central Division cars running on a mileage basis?

A. Very few of them now; but in the Southern division and all the rest of the divisions about everything is on the mileage basis.

Q. But suppose it is a car from another division which is not on the mileage basis, and it is put off for a month, and requires extensive repairs, those repairs will then be charged against the Central division, will they not?

A. No, they will be charged against the division that car last performed service in.

552 Q. But it had been running a month before the repairs were ordered in the Central Division service?

A. The Central division would not be charged with the repairs of that car for the month's service.

Q. Not after a month's service?

A. No, sir.

Q. Suppose it is here for six or seven months, against what division would the repairs be charged?

A. That would be prorated.

Q. Is not that the way all the expenses are settled, that they are prorated?

A. Virtually, yes, sir.

Q. Is not your company's account made up on the basis of prorating the charges?

A. Not generally, not necessarily or generally so in regard to the distribution of the expense of maintenance.

Q. Do some of the companies that are operating Pullman cars repair them on the mileage basis?

A. They do, and if they do, they bill the Pullman Palace Car Company just the same as if it was a contract shop.

Q. With what roads, as far as you can remember, have you contracts by which those railroads agree upon the mileage basis to keep your Pullman cars running over them in repair? First, take the northern roads, for instance—any New York roads. How about the New York Central and Hudson River?

A. We do not operate on those.

Q. What other large roads are there in New York?

553 A. There are really no roads that agree to keep them in repair.

Q. Are there not roads that have a mileage contract with you by which for a mileage they are to repair?

A. No, I think not.

Q. Is the West Shore road, New York Central system, running opposition cars?

A. Yes, sir.

Q. What is the name—Woodruff?

A. No, Wagner.

Q. How about the New York and New England? You have a Pullman service there?

A. Yes, sir.

Q. How are the cars there kept in order—on a mileage basis?

A. No, they neither pay mileage nor maintain. It is the same as the Pennsylvania.

Q. Who maintains them?

A. We do.

Q. Do they make allowance of maintenance?

A. No, sir; not at all.

Q. Your contract there is virtually like the Pennsylvania railroad's?

A. Yes, sir.

Q. Is your service on the Erie?

A. Yes, sir.

Q. What is the arrangement there?

A. They pay mileage.

Q. What mileage do they pay you?

A. Three cents.

Q. How old is their contract?

A. I think it is in its fifth year.

554 Q. Is not the Ontario and Western one of the largest roads there?

A. That is a small road.

Q. It is a road of a couple of hundred miles, is it not?

A. Yes, sir.

Q. Have you a contract with them?

A. Yes, sir.

Q. Mileage?

A. Yes, sir.

Q. What is it?

A. Three cents a mile.

Q. Are you sure of that? Are you sure that it is not a cent and a half?

A. It is three cents a mile.

Q. When was that contract made?

A. At the same time with the West Shore.

Q. Do you keep them in order for three cents, or do they keep them in order for three cents?

A. We keep them in order.

Q. Is it not the other way? Does not the Ontario and Western keep them in order, and do you not allow them a mileage for doing it, and is not that mileage one and a half cents?

A. No, sir; there is no one and a half cent mileage anywhere.

Q. Is it not a fact that they keep them in order instead of you?

A. In thinking over that contract of the Ontario and Western, that is on the maintenance basis. They do maintain the cars.

Q. At what price per mile?

A. There is no mileage about it. They simply maintain the cars.

555 Q. Suppose a car, not one of the 100, but another car, has been running for a year in the Central division, having been transferred from some other division, and then requires large repairs; against what division do you charge that—the Central, or the division from which it came a year before?

A. There would be no charge to either division, because if a car should be transferred in that way, the car would have been running on the mileage basis. Therefore, there would have been a fund set apart. In other words, the mileage that had been received would have been set apart to cover that expenditure.

Q. By the by, is there not a mileage fund in your company in connection with the Central Transportation Company business?

A. I could not answer that.

Q. You do not know whether or not there is a fund of nearly $500,000 to the credit of mileage account in consequence of the repair at three cents per mile by your company of the cars in the Central division?

A. I do not.

Q. You have said that if that car came from another division, and had been running a year on the Central division, and required

extensive repairs, that it would not be charged to the Central division, because it would be on the mileage basis. Now, certainly you would not charge a mileage against any other railroad which was paying it to you for a car which had been for a year out of the service of that other road, would you?

556 A. The railroad companies pay mileage monthly as that mileage is made.

Q. Then if it has been a year out of service of a company that had been previously paying mileage for that car, how would you charge up the repairs?

A. Against the mileage.

Q. But how for a year during which there had been no mileage?

A. There might not have been any mileage for the year, but at the same time there might have been a mileage fund or a surplus of mileage more than had been expended on repairs.

Q. If, therefore, we find as a fact that on your books there is a mileage fund, unexpended, of $500,000, it must mean that there is to the credit of that division a surplus received on account of mileage over the amount previously expended; isn't that so?

A. If there is such.

Q. What percentage of gross earnings in your company is calculated to cover all your expenses, including expenses of administration, of operation, of maintenance of equipment, and of maintenance of cars, including the wheels and trucks?

A. I cannot answer that.

Q. Do you not know that it is forty-five per cent.?

A. I do not know that.

Q. Have you never heard?

A. Well, I may have heard something about it; but at the same time I haven't that in my mind, and never put it in my mind sufficiently to give an intelligent answer.

557 Q. A gentleman of very long experience in palace car matters, and Pullman palace cars especially, as second vice-president of the Pullman Palace Car Company, do you mean to say that you do not know that there is a thoroughly settled percentage representing the percentage of gross earnings, which covers all the items that I have particularized?

A. There may be; but in the position of second vice-president I have no opportunity, and it was not necessary in my line of duty to pay any attention to that whatever. Therefore I have not done so.

Q. And you have never, in all discussions about this matter, heard that percentage alluded to—that is, the amount of it?

A. No, sir.

Q. And you have no judgment whatever of what it is?

A. No, sir.

Q. Then how did you get at that $96,000 of net earnings which you communicated to the board of directors of the Central Transportation Company, you having been delegated, as Mr. Pullman has told us, to convey to them information because of being best acquainted with the facts?

A. I got that for that one year from the auditor of the company.

Q. When you were gathering it did you not gather the amount of that percentage of gross earnings which represented gross expenses?

A. I gathered all the data together, of course, to enable me to make an intelligent estimate.

558 Q. Did you leave those figures with the directors of the Central Transportation Company in writing?

A. I think one of those gentlemen took my original papers.

Q. Try and recall who your memory fixes upon as the man.

A. When I had the papers on the desk in the private room in front of Mr. Cottringer and another gentleman who was in the room with us—I haven't the slightest recollection of his name at the present time—but when they went out into the other room where Mr. Wright, Mr. Morris and the rest of the gentlemen were, and Mr. Pullman and General Porter, they took my memoranda with them. I have never seen it since.

Q. But you cannot tell who?

A. I cannot tell which one of them. They took it out with them.

Q. Is there not a form of auditor's report in the Pullman Company made up monthly showing monthly net earnings, monthly gross receipts, and monthly percentage of expenses, calculated upon gross receipts—a regular printed monthly form?

A. I do not think that is made out monthly.

Q. Is it made out yearly?

A. Yes, sir.

Q. That shows this percentage, does it not?

A. I expect it does.

Q. Have you never had the curiosity to see that all-important fact in administration, and to look at such report?

559 A. Well, I would look at such report, but I do not put that in my mind. In fact, these are questions regarding the finances of the company that I haven't anything whatever to do with, and I am not, therefore, in position to give answer concerning them.

Q. Let us now get down to business, for these have been loose skirmishes. You calculated what it would cost to repair the thirty-seven cars which were at Altoona and elsewhere, did you not?

A. I made an estimate and made calculations; yes, sir.

Q. Was the original estimate made by some one else and submitted to you, or did you do the figuring in detail which resulted in the aggregate?

A. I made the inspection and the estimate personally.

Q. Then the details were your own, were they not?

A. Yes, sir.

Q. Before I go to that, let me ask you, did you ever hear that the profit of the Central Transportation Company under the old lease after paying the rental was twenty-five per cent. of the gross earnings?

A. I never heard that.

Q. Nothing to that effect?

A. No, sir.

Q. What is your judgment as to there having been that much?

A. Well, I couldn't tell you; but in all the statements that I have ever seen, there was no such profit as that.

Q. What was the profit in the statements which you saw?

560 A. I have no recollection.

Q. Coming back to the matter of these cars, will you be kind enough to produce your original data, showing the calculations as you made them at the time on the spot, of the amount of repairs required on these different thirty-seven cars?

A. I cannot, because I never retained it.

Q. What did you do with the paper after you made it out—to whom did you hand it?

A. I have no recollection what I did with it.

Q. Were you aided and abetted in the making out of that paper by any one, and if so, by whom?

A. I don't think any one assisted me in it.

Q. You think that was your own unassisted labor?

A. I think so.

Q. It was made out after personal inspection of all these 37 cars?

A. It was.

Q. How do you account for the fact, if it was made out after personal inspection of these 37 cars, that you fell into the error of including four cars that were not stored, but were running?

A. I don't know how anything of that kind occurred. My estimate was made at so much per car. There would be a little variation between some one car and another; but I finally came to the conclusion that $1,250 per car would be a proper estimate to make, and if I have figured on 37 or 57, it does not affect my judgment.

Q. But I want to know how you were able to estimate the cost of repair of four cars that you did not and could not see, because they were not where you supposed they were, but were actually in

561 running service. I want to know what second sight you gentlemen of the car companies have.

A. The cars that you allude to were 106, 107 and 86.

Q. And there was yet another?

A. The other car was then stored, so that that came in in that estimate.

Q. How were you able to estimate upon what it would cost to repair them if you did not see them, because they were not there, but were running elsewhere?

A. It would not require, with the familiarity I had with the cars, to have any particular car right there to inspect, as I was always inspecting them.

Q. Then, may I take it that this was an estimate made on general information and belief, without inspection?

A. That estimate was made on a personal inspection, as I have stated before. I visited Altoona, and the cars that were under the shed; I was obliged to have one of our watchmen or a Pennsylvania Railroad watchman, with his lantern and mine, to get around to get

light enough to see what I was doing. As far as cars that were running on the road was concerned, or not there, it did not require personal inspection for them, because I not only could tell, but I knew about how much money it would cost to put any and every car in condition.

Q. Then did you calculate that it would take as much to put the cars which were running, and which were not stored, as you thought, in running order, as it would to put those that were stored in running order?

562 A. It might, and might not.

Q. But I want to know what you did in the way of estimating. Did you make your estimate really after examining the history of the car—a sort of telegraphic or telephonic diagnosis?

A. The history of a car has a great deal to do with it, for the reason that we keep a history always with us as to the condition of that car, length of time it has been out unvarnished and unpainted, so that we are able, and really have to refer in estimating, very frequently to that history.

Q. Then you must have examined the history in making out your estimate?

A. I didn't make any examination of the history of those cars at Altoona, in making that estimate.

Q. About how long were you examining the cars at Altoona?

A. One day.

Q. How much of the day?

A. I should say I put in about five or six hours at it.

Q. They were in the shed?

A. Yes, sir.

Q. A dark shed?

A. Yes, sir.

Q. Huddled close together?

A. About as close as you could couple them together.

Q. On tracks close together?

A. I should say the tracks were three feet apart.

Q. Did you enter every car?

A. I went right through each car.

Q. Through every car?

563 A. We went outside of the car first, and then through that string, and then took in between two lines, and then through the next line, and so on until we took them all.

Q. Did you make any figuring while you were going through, or any notes of what you saw?

A. I took my notes, and put down, maybe, some particular things in regard to the interior of them and the line of trucks that were under them.

Q. What did you do with those notes?

A. I haven't any idea.

Q. About how long did it take you to go through a row of five cars in this examination?

A. I didn't time it.

Q. But you can give us an idea. Was it ten minutes?

A. I don't know; it might take ten, and it might take forty.

Q. Why did you not have the cars run out into the open light of day? Wouldn't that have been more satisfactory?

A. Yes, sir; but the location of those in the tracks was such that you can't very well do that.

Q. So that they were so located that there was an imperfect opportunity of thoroughly examining them?

A. Oh, I could have had the cars all run out.

Q. But I mean that they were so located where they were located that there was no thorough opportunity to examine, where they were.

A. The opportunity was just as good there as it would have been anywhere, excepting that we didn't have as much light.

564 Q. That is always an important consideration in any examination of interiors, is it not?

A. Well, yes.

Q. Did you take a lantern or candle or an open kerosene lamp, or what illuminating power did you have?

A. A lantern, as I have stated.

Q. And this watchman accompanied you with a lantern?

A. Yes, sir.

Q. By the light of that lantern in this dark shed you groped your way amongst the huddled cars and made an examination that enabled you to give this estimate?

A. We didn't have to grope very much; we had two lanterns. I had my own to look around and see what I wanted.

Q. How many of the cars were there at that place?

A. I can't tell you.

Q. Did you go anywhere else to examine the cars that were stored—part of the thirty-seven?

A. I did not.

Q. You know that some of those cars were stored at Pullman, don't you?

A. I do not think so.

Q. Let me guide you. Were not some of the cars stored at Pullman, and were not some of the cars stored at London, Massachusetts?

A. There were none in Massachusetts.

Q. How many cars will you say were stored at Altoona? You don't know, do you?

A. My recollection of the number of cars that were stored at Altoona at that time is 43 or 45.

565 Q. Then there were some that did not belong to us?

A. Probably there was.

Q. But weren't there some of the 37 that were not stored at Altoona?

A. I think they were all there.

Q. Why did you say: "Thirty-seven of said original demised cars now stored at Altoona and elsewhere, being cars numbered" so and so—why did you put "and elsewhere"?

A. Because they might have been changed.

Q. How could that be if you had just gone through examining the numbers of them?

A. They might have been changed for the reason that No. 91 that was stored there was elsewhere at that time.

Q. Did your list show the number of cars that you examined—part of the 37?

A. My list, when I made that up, showed every car that was stored.

Q. Do you recall whether all the 37, excepting the three or four which we have shown to have been running at the time, were stored at Altoona?

A. My list showed that; but I don't know just what that list did show at this time.

Q. Then, if there were cars not stored at Altoona, you did not examine them and were not able to estimate the amount that it would cost to repair them; isn't that so?

A. No, sir; that is not so; as I have stated, I made an examination of every car that was there.

566 Q. But suppose, in point of fact, some of the cars—part of the 37, and outside of the cars which we have shown to have been running—were not stored at Altoona; then you did not examine them, isn't that so?

A. If they were not at Altoona, then I did not examine them at that time.

Q. Then how were you able to estimate what it would cost to repair a car which you did not see, and, therefore, did not examine?

A. To the best of my recollection, the cars that are on that list were there; consequently, I examined them, and estimated from actual observation.

Q. Suppose I show that some of these 37 cars, outside of those which were running—the three or four—were not stored at Altoona; then you could not have examined them, could you; for you did not examine any of the cars, excepting at Altoona.

A. Not at that time, and with that in view.

Q. Then, if it shall prove that there were such cars, your estimate must have been mere guess, must it not?

A. No; because we still had other data to work upon. Our mechanical inspector had made an examination and an estimate as to the value of each of these condemned cars.

Q. But that would be the hearsay of another man.

A. That was the report to me.

Q. Was your estimate made up in reality from the report of your inspector?

A. No, sir; my estimate was made up from my own observation.

567 Q. What were the items which went to make up the 37?

A. I cannot give you that from memory; I don't know.

Q. What sort of repairs did you estimate to be done for $1,250?

A. That was an estimate to put those cars in what might be termed safe running condition.

Q. But I want to know what you estimated to be done. Do not

characterize it by saying to put it in safe running condition. What repairs did you estimate to make in order to put the cars in that condition?

A. I could not itemize how many brake-shoes and bolts it would require for renewal in the truck, or how many wheels it would require to be removed.

Q. Did you ever itemize them?

A. I did not.

Q. Then was it a rule of thumb estimate, or was it an estimate that depended upon a detailed calculation of various repairs?

A. Our experience is so thorough and complete in that that it was hardly of any value to go into details and estimate as to cost of repairing any car.

Q. I appeal to that vast experience, and ask you from the depths of it to evolve an answer to this question. What were the various repairs that were required to be done, and what was the cost of the different items of those repairs?

A. I am unable to give you an itemization; of course.

Q. Give me the best details you can of the various heads of expenditure aggregating $1,250?

568 A. Commencing with the trucks, there would be renewals of brake-shoes, wheels, nuts and bolts, and some timbers.

With the platforms, it was to include renewal of timbers, painting and varnishing, and air brakes to be overhauled, and cylinders cleaned and oiled.

The body of the car outside to have panels that were checked or decayed, renewed. The same with the window sash. After this renewal, to be painted, striped and varnished.

Roof to be overhauled and repaired where there was defective tin, and to receive one coat of paint, or two as the case might be.

The deck screens to be renewed if wire gauze was defective. If not, they were to be taken out and cleaned, and afterwards painted and varnished.

The inside of the car was to have its head lining cleaned and touched up and varnished. The wood-work throughout touched up and varnished, and stoves overhauled and put in working condition. That gives you a general idea.

Q. How much did you calculate the wheels and trucks would cost?

A. I haven't my memorandum.

Q. But you can give me from that vast experience, which enables you to know what things ought to be done, a calculation of what the wheels and trucks would cost?

A. I should say about $125.

Q For new wheels and trucks?

A. Yes, sir. That would not require renewal of all.

Q. But these cars, you know, had been running a good while.

569 A. It did not make a particle of difference whether they had been running a thousand years, because the railroad company, even up to the time they were stored at Altoona, were

rigid in their inspection, and kept those wheels in just as good running condition as they were when the car went on the road.

Q. So that after the long use of these originally badly built cars, for they have been so described in some of the testimony, these wheels and trucks were not so defective that they required new ones?

A. The wheels are just as good as the wheels under any car that they are running today.

Q. And the trucks also?

A. No, sir, not the trucks.

Q. The trucks were not?

A. The trucks were not.

Q. What does a new set of wheels and trucks cost?

A. It depends altogether on the wheels.

Q. Take standard paper wheels and trucks?

A. It would cost $2,100 a set.

Q. Give that for No. 3 and for No. 5?

A. $1,721 a set.

Q. No. 3 $1,721 and No. 5 $2,100?

A. Yes, sir.

Q. What is the length of service of those wheels and trucks that cost originally that sum? What length of service would you expect to get out of them?

A. By proper handling we ought to get out of the wheels an average mileage of 400,000 miles.

570 Q. And how much out of the trucks?

A. The trucks the same.

Q. The wheels and trucks about that much?

A. You would get, of course, more out of the trucks than that, because trucks, if kept in order, would simply last as long as the car would.

Q. Then you would not expect in the ordinary fair service of a car that the truck, during its life, would have to be replaced?

A. Not if it was a proper standard and good riding quality.

Q. What repairs would you expect to be obliged to put upon a wheel during the running of the 400,000 miles?

A. It would have to have its tires turned. They are steel tires. They would have to be turned down to a proper templet at the expiration of every 65,000 or 75,000 miles.

Q. That would be all the repairs that the wheels would require during a run of 400,000 miles?

A. That would be all.

Q. What would that cost each time?

A. An average of $5 a pair, or $2.50 a wheel each time the tires were turned.

Q. There are four pairs under each car?

A. Six pairs.

Q. The trucks would require, during their life, about how much repairing?

A. That is very hard to estimate, because it depends altogether

on the road. In fair use, exclusive of wheels, I would say that it would require about $100 per year to keep the trucks in order.

571 Q. Would the wheels, after they had ceased to be able to run, be worth anything?

A. They would be worth the difference between $55 and $67 in one instance, and $55 and $75 in another.

Q. For each wheel?

A. Yes, sir; that is, according to No. 3 and No. 5.

Q. And the trucks would be worthless—would be worn out at the end of their life. Would they sell for anything?

A. They would simply be worth what the old iron was worth at so much per ton.

Q. In the cost of $1,700 and $2,100 of wheels and trucks, how much do the wheels represent and how much the trucks?

A. If you figure the wheels at $67 No. 3, and $75 No. 5, you will have it.

Q. What would the old wheel, however, be worth after its run of 400,000 miles?

A. It would be worth very little, unless you had a place to use it.

Q. What place, for instance, would be possible?

A. If you were continuing in the service, because no one would want to buy an old wheel. The difference between an old one and a new one being so small, no railroad company or sleeping car company would want to buy an old wheel. That is, the difference between the value of that wheel, after the tire is worn out, and the value of a new one is only $12 in one case.

Q. After a run of 400,000 miles, all that is necessary is to re-tire the wheel, and it can be run another 400,000 miles; isn't that so?

572 A. That is all, provided the internal construction is perfect, and there has been no give to it.

Q. That is, if it is properly constructed and properly used?

A. Yes, sir.

Q. The cost of re-tiring about represents the difference between the old and new wheel; isn't that so?

A. The cost of re-tiring is $55, without any variation.

Q. What did you estimate generally for the brake-shoes, nuts, bolts and timber for car?

A. I should say, from the best recollection that I have now, taking the condition of those—that is, keeping their condition in my mind, that I figured about $90.

Q. Before I leave that point, I want to be sure I have been right as to your judgment of what it would cost per wheel to re-tire the wheel after it had made its run of 400,000 miles. You have stated it heretofore, but please restate it.

A. It costs $55 a wheel.

Q. $55 a wheel, or for two wheels?

A. A wheel.

Q. With the platforms to include renewal of timbers, painting, varnishing, etc., what did you calculate?

A. In other words, you want me to go back from memory, and re-estimate?

Q. I do.

A. The platforms, $10; trucks, $115; air brakes, $5; body outside, $600; $50 for sash; $25 on roof; $15 on deck screens; $15 on ceiling; $5 for stoves; $410 for inside finish.

573 Q. Is that the way you made up the $1,250 for each car?

A. It is as near as I can recollect it.

Q. How much in all had been allowed to the Pullman Company by the Pennsylvania Railroad Company, or any other railroad company for those 37 cars which were so stored at Altoona or elsewhere?

A. For the most of those cars, we received from the Pennsylvania railroad $3,000 apiece, and some of them as much as $7,000. There were only the two prices—$3,000 and $7,000. The original cars—that is, prior to this last settlement—they allowed in lieu of repairing the cars $7,000 apiece; but in the last settlement they allowed in lieu of repairs to wind that up $3,000 each.

Q. Then, for all those 37 cars there had been an allowance by the Pennsylvania railroad of either $3,000 or $7,000 to you to repair them?

A. To the best of my recollection—yes, sir.

Q. Was not considerably the larger amount of allowance at the rate of $7,000?

A. No, not in these last cars.

Q. But I refer to the whole batch of 37. Was not considerably the bulk of the 37 cars settled for at an allowance for repairs of $7,000?

A. Yes, sir; I think so without referring to the records—a little more than half.

Q. In other words, were not 22 of the 37 settled for by an allowance of $7,000, and 15 of the 37 settled for by an allowance of $3,000, excepting two, which were settled for at $3,500?

A. That may all be; the records of the company would show it.

574 Q. Where are those records kept?

A. At Chicago at the general office.

Q. Who made that settlement, the superintendent of the division here?

A. No, sir; it was made by the general superintendent; his headquarters are in Chicago.

Q. How was the Pennsylvania railroad enabled to reduce the allowance which they made for repairs from $7,000 to $3,000? Was not that part of the bargain by which you agreed to repair the cars thereafter upon the mileage basis of 3 cents per mile?

A. No.

Q. Was not that allowance of $3,000 part of the general settlement by which 3 cents per mile was allowed?

A. No, sir; they had got to such a condition that they were a little more arbitrary and not quite so liberal. In the case of the $7,000 cars, it was a question of dollars and cents in each of those

cases, because they did not want the cars even if they were repaired, and from their experience they knew it would cost them that amount of money. They preferred, therefore, to have that money invested in a brand-new car—modern—than to put it into one of those cars that they were responsible for, and at the same time it was taking up their shop room. Afterwards, when we came to the final settlement of these, we (they) had then commenced to receive more cars, so that they felt a little independent. Their lines were actually provided with modern cars to handle their passengers.

575 Q. Then the last settlement, although the $7,000 would have been required, they were more arbitrary, and they were able to put a squeeze on, and did not allow what was sufficient, and only allowed $3,000; is that so?

A. They allowed $3,000; but, if my recollection is right, they made an allowance of $4,000, provided the car would be turned over to them the same as had been done in previous cases; but we, that is, the Pullman Company, considered these cars sufficiently good to answer any emergency cases, therefore, to prevent their being scrapped they settled with the Pennsylvania railroad or accepted a settlement of $3,000 and retained possession of the cars.

Q. But before, when the $7,000 was allowed, the Pullman Company still, of course, retained the car?

A. They did not.

Q. Do you mean to say that they took the $7,000 and actually sold the car?

A. They took the $7,000, and the railway company took possession of that car, and got the iron and got what they could out of the old iron.

Q. But they could not have done that, because you told us those cars were stored. I am speaking of the 37 cars. They were stored. How on earth could the Pennsylvania Company have allowed you that?

A. You did not mention the 37 in that connection, and I thought you were alluding to something else. There were some of those 37 that were treated the same way—$7,000—as those of the $3,000. The Pullman Company retained possession of the cars, and they received that amount of money.

576 Q. Is it not a fact that all of the 37 cars which were settled for at $7,000 the Pullman Company still retained the car?

A. That is a fact—all of them.

Q. Then all of the 37 cars which were stored at Altoona which were settled for at $7,000, still remained, after that settlement, the property of the Pullman Company?

A. Yes, sir.

Q. Is it not a fact, therefore, that the Pennsylvania railroad squeezed down the allowance for repairs from $7,000, which was formerly required, to $3,000 because the Pullman Company was not in a position to make a good bargain with them?

A. Well, that had something to do with it.

Q. What can be got out of a car simply by scrapping it—$2,000?

A. No, sir.

Q. About how much?

A. Deducting labor from the value of the scrap and material there is about between $600 and $800. That would include, not only the iron, but what you could get for the old upholstering and everything. It is not worth over $800.

Q. Then I may take it that the Pullman Company never sold any of the 37 cars to the Pennsylvania railroad?

A. That is my recollection.

Q. About when was the $7,000 per car allowance made, and when the final settlement, when $3,000 was allowed?

A. I haven't those dates in my mind.

577 Q. How about the $3,000 allowance? Was it after the mileage contract had been made with the Pennsylvania railroad, or at the time?

A. No, I think that was a little before that.

Q. As to any of the 63 original cars of the Central Transportation Company, was there any repurchase by the Pullman Company from the Pennsylvania railroad after they had been sold to the Pennsylvania railroad—that is, a repurchase and a rebuilding of any of our old cars?

A. I think not.

Q. You do not know what became of the 19 cars which were on the Baltimore and Ohio railroad, do you?

A. I couldn't tell you what became of those, excepting in a general way.

Q. How general would the way be?

A. Taking the individual cars, I couldn't say which were scrapped by the Baltimore and Ohio railroad at Mount Clare and which were scrapped by the Mississippi, Marietta and Cincinnati.

Q. Were they all scrapped, or were not some of them allowed to run, and are not some of them running at this day?

A. No, sir; my recollection is that all of the Baltimore and Ohio were scrapped and wiped out of existence, as well as of the Marietta and Cincinnati, and that one if not two cars on the Ohio and Mississippi were retained for quite a long time afterwards.

Q. Then those cars were sold by the Pullman Company to those railroads, the Baltimore and Ohio and others, who scrapped them?

A. It was by the Baltimore and Ohio railroad.

578 Q. Were they sold by the Pullman Company to the Baltimore and Ohio?

A. When you come to a question of a settlement of the 19 cars in connection with the Baltimore and Ohio railroad, I cannot give you from memory intelligent answers.

Q. You can certainly give me, from some data before you, what was received for those cars?

A. No, sir; I cannot.

Q. Turn to that list which you have and turn to car 28 on that list and show me what was paid for it?

A. According to this list, $4,000; but I do not wish to quote this as being an exact list.

Q. But it is your list?

A. That is my list, but that is not taken from the books of the company.

Q. Where was it gotten from?

A. It is from information received through the general superintendent at various times as these matters went into effect.

Q. Where was that information recorded?

A. That information was recorded in the general office in Chicago.

Q. And it must have been also in the superintendent's office here?

A. In the shape of letters; yes, sir.

Q. In point of fact, what man gave you that information in regard to what was got for those cars?

A. The general superintendent of the company.

Q. What was his name?

A. Various names.

Q. It was given from time to time, was it?

579 A. Certainly.

Q. What book did you keep that information in? You did not carry it in your head; you must put it somewhere, and from that place transferred it to your list.

A. We never made an entry into our books. There was no object for us to do that. We simply had to go over the records, getting that list from the auditor of the company.

Q. You got it from the auditor of the company?

A. I think so.

Q. Well, take it as you got it from the auditor of the company. No. 26 was sold to one of those railroad companies for $4,000. Nos. 28, 31, 33, 46, 62 and 101, were they not sold for the same price?

A. You have that information there before you.

Q. No, I haven't got it. State from your list what was received for No. 31.

A. $4,000.

Q. What for No. 33?

A. The same.

Q. What for Nos. 61 and 26?

A. The same.

Q. What for No. 36?

A. $6,000.

Q. When?

A. I do not know.

Q. Have you the date before you?

A. No, sir.

Q. How much for No. 37?

A. $6,470.

Q. How much for No. 45?

A. $4,737.

580 Q. How much for No. 46?

A. $4,000.
Q. How much for No. 53?
A. $6,000.
Q. How much for No. 54?
A. $6,000.
Q. How much for No. 62?
A. $4,000.
Q. How much for No. 63?
A. $3,000.
Q. How much for No. 64?
A. $3,000.
Q. How much for No. 101?
A. Nothing.
Q. Look again, if you please.
A. There is nothing on my list for that.
Q. How much for No. 103?
A. $7,982.
Q. How much for No. 116?
A. $4,000.
Q. How much for No. 83?
A. Nothing.
Q. How much for No. 84?
A. Nothing.

Q. How is it that three of them have no figures opposite them? It was not because nothing was received, of course, was it?

A. I don't think we received anything for those.

Q. How was that? Has it not been settled yet?

A. I think not. I do not think that Baltimore and Ohio matter has been settled yet, fully.

Q. You certainly did not give them away to them? You didn't give our cars to them?

581 A. We are not in the habit of giving much away. We have to account for all this property.

Q. Speaking about accounting, how is it that you tendered to us $3,000 apiece for those cars, when the lowest sum you got was $3,000 for two of them, $4,000 for many, $6,000 for some, and for one as high as $7,980?

A. I do not know.

Q. You are the godfather of Exhibit F. Was it your suggestion, or did somebody else make it to you; and if some one else, who was that some one?

A. I do not understand that Exhibit F mentions anything about the value that we received, or anything appertaining to the financial part of the matter.

Q. Let me read from Exhibit F. "The original demised cars No. 26, 28, 31, 33, 36, 37, 45, 46, 53, 54, 61, 62, 63, 64, 83, 84, 101, 103 and 116, were destroyed and not replaced, and Pullman's Palace Car Company tenders $57,000 in lieu thereof as being a fair value thereof." Now let me ask you who suggested originally that $3,000 was a fair tender in view of the fact that only two cars had been

sold as low as $3,000; that many had been sold at $4,000, and a great many at $6,000 and upwards?

A. My recollection of that is that those are valuations that were placed on them by the inspectors as to the value of them; but that as to the question of settlement of all of those Baltimore and Ohio cars, they have not been settled yet.

Q. But only three remained to be settled, and those three
582 out, it appears that the Pullman Company has received from those who bought our cars $71,240.

A. I do not mean to say that the Pullman Company has received that amount of money.

Q. What do you mean to say?

A. I mean that that is an estimate as to what they should receive. That is a question, because that isn't settled yet.

Q. Do you mean to say that the figures you have given me are not figures which the auditor gave to you as being the amount actually received in settlement for as many of the cars as you have given figures for?

A. I cannot say where all of these figures came from. From my own personal knowledge, I couldn't tell you whether I had received those from the auditor or not.

Q. Where is the inspector's report upon which you made up that tender of $57,000?

A. I do not know.

Q. How do you suppose that the figures $7,930, which you have given me, were arrived at by the auditor if they were not the figures of an actual settlement?

A. I cannot tell you that. I should say that the auditor of the company could answer that better than I could.

Q. Don't you know that the auditor of your company is not in the habit of giving figures which he does not derive from his books, or is it otherwise?

A. He is not in the habit of it. At the same time, I cannot
583 tell from my present recollection whether I got all of these figures from the auditor or not.

Q. Is it a fact that you had before you a list, which you did not give to the Central Transportation Company's officers, which showed that for fifteen of the nineteen cars your company had actually received over $71,000? Why is it that you, instead of tendering the money which had been received upon a sale of our cars tendered only $57,000?

A. I cannot answer that. That is something that I haven't anything at all to do with.

Q. Who was responsible for it?

A. I do not know.

Q. You made up Exhibit F. Who told you to put it that way? Embody in life and substance the man who did it, and put to him a name.

A. I cannot tell you who it was.

Q. Don't you know, or is it because you don't want to criminate

him? Was he lawyer or layman, president or vice-president, or who?

A. Well, I cannot tell you because there are so many of them. We were working together—so many of us, that I couldn't tell you.

Q. Give me the crowd that worked together to reach that result.

A. I should say that it was the auditor of the company.

Q. State his name.

A. C. H. Davy.

Q. Dead, of course; is he not?

A. I suppose he is.

Q. When did he die?

584 A. I do not know.

Q. Is there any living man that you can remember who formed a constituent of the crowd that did this thing? Mr. Pullman, of course, did not participate?

A. I don't think he did.

Q. General Porter, of course, did not participate?

A. I think it was simply the auditor and Judge Lochrane. There might have been Mr. Burry present.

Q. Was the agreement between the Pullman Company and the Baltimore and Ohio Company in writing?

A. Yes, sir.

Q. Have you ever seen it?

A. Yes, sir.

Q. Was it one or more agreements that embodied the whole deal?

A. I think there were two.

Q. Made nearly the same time, or widely separated in dates?

A. I cannot recall that. I do not recollect.

Q. Let us now come back to these 63 cars, and let me see the supplemental history that I have heretofore called for.

A. What particular car do you mean?

Q. I mean the book which embodies the supplemental history.

A. There might be some car which you wanted to particularly refer to.

Q. Is it not in the book?

A. Yes, sir.

585 Q. Let us see what it looks like. I see that you have lots of them now. (Referring to a number of books before the witness.)

A. Yes, that brings it down to the present date. I have here a history from 1870 to date.

Q. Please trace the history of Nos. 83 and 84.

A. You have the descriptive history before you in the first book.

Q. Then it is not continued beyond the book I hold?

A. We only have the record of No. 83 up to September, 1871, when it was transferred out of that jurisdiction into the Southern division. We next have the record of it in 1875, when it was received from construction department entirely remodeled.

Q. It came back entirely remodeled?

A. Yes, sir.

Q. Where did it run then?

A. Then it was placed in service on the Baltimore and Ohio road.

Q. When was it sold to the Baltimore and Ohio?

A. It was calculated to be sold at the time it was received back from construction department, according to my recollection; but I do not think there was ever any settlement made.

Q. Look at the history of the car and see whether car 83 was not sold to the Baltimore and Ohio railroad for $7,000?

A. That was probably the understanding between the master of transportation of the Baltimore and Ohio railroad and our company; but all of those cases of the Baltimore and Ohio settle-
586 ment of those old cars have been held in abeyance. I do not think anything is yet settled. That is my recollection. If there is a clean settlement with the Baltimore and Ohio railroad affairs, I do not know anything about it, and you will have to get that information from other sources.

Q. Read what is stated as to the history of No. 83 at the bottom of the page before you?

A. The closing paragraph of the history of car 83 says: "Sold to Baltimore and Ohio railroad January 5, 1882, for $7,000."

Q. Look at the closing paragraph of the history of car No. 84.

A. "Sold to Baltimore and Ohio Railroad Company for $6,750."

Q. Do you find car No. 101 referred to there in that connection?

A. Yes, sir, it was condemned in 1870.

Q. What about the sale of it?

A. It does not mention that.

Q. Please look at Exhibit F. In the second paragraph of that exhibit you put as a substitute for our old car No. 67 the Etna, do you not?

A. I cannot say whether the Etna is placed as a substitute for No. 67 or not; but I must say that the arrangement, and what we considered was proper to do, was to take the cars in the order in which they had been received new from construction department of the Pullman Palace Car Company as substitutes for those cars, irrespective of the date at which they went out of service.

Q. Look at your list, and let me see whether on that list you have put the Etna as a substitute for No. 67.

A. Yes, sir.

587 Q. I now read to you the history of No. 67: "This car was built by P., C. & St. L. R. R. Co. to replace old car destroyed in accident at Steubenville; delivered October 1, '69, a silver palace car; commenced service in New York and Cincinnati line; shopped at Steubenville November 6, '71, until March 26, '72, general repairs, and continued to run in the New York and Cincinnati line. 9 at L., 819 to 304; 1876 for 28; lay idle at Cincinnati during '78 and '79, and settled for by P., C. & St. L. Railway Co. January 5, '80." What was got for No. 67 when it was settled for?

A. From my records there, and that is the only information that we have; the only information that we have of the settlement is from letters of the general superintendent.

Q. Where are they kept—at Chicago?

A. At Chicago, and if that notice of the amount had been furnished to the division superintendent it would have been entered on this record.

Q. What have you on your press-copy list before you as the date of withdrawal of No. 67, and the date of entry into service of the Etna?

A. The date of withdrawal is November, '72, and the entry into service is March, '71.

Q. Let us see when the Etna did come in the service. I read from page 347: "Etna; built by Hannibal and St. Jo; assigned to wild. Commenced service, '72; style of car, S. D. R.; received from construction department first-class condition; remodeled to plan 19½. March 8, '78, ran in Washington and Savannah line." Is it not a fact that that car, the Etna, was an old car of the Han-

588 nibal and St. Jo, built in '72, remodeled by your company in March, '78, and not put into your service until March, '78?

A. That may all be; but when that car was received——

Q. Look if it is not so stated in its history, and afterwards make your explanation as you please.

A. This shows that the car was built and commenced service in '72.

Q. In the Hannibal and St. Jo?

A. Oh, no; it was built by the Hannibal and St. Jo Railroad Company. We were getting cars along in the first few years built at every railroad and contracting shop where it could possibly be done. Wherever we could get a car built, it was done. From this record, it shows that the Hannibal and St. Jo railway built that car, not to run on that road but to build it, and it was not assigned, because it is entered as wild.

Q. Did that car enter the service of the Central division prior to 1878, from the history of that case?

A. It did not. According to this history, that car was not in the Central division until 1878. As to the condition at the time that car was transferred and put in the Central division, it was the same, to all intents and purposes, as a brand-new car, and accepted as such by the railway company.

Q. And had as much life as a new car?

A. Every bit.

Q. Then, after a car is remodeled, its life runs from that remodeling, the same as if it was a new car?

589 A. It does if you put money enough on it and you have the frame to build to. You can, of course, make a new car out of it, even if you have only the king-bolt hole.

Q. Look at your list, and state what car you have marked as a substitute for our car No. 115. It is the Richmond, is it not?

A. Yes, sir.

Q. What date have you put car 115 as withdrawn from service, and what date have you put the Richmond as entering the service?

A. One is July, '77, and the Richmond is January, '77.

Q. Let me read the history of that car: "Car 115. This car was built by Harlan & Hollingsworth; delivered October 20, '69, a silver

palace car; assigned to Pennsylvania railroad; commenced service in their through line; was shopped at Altoona, January 14 to February 9, '71, for repairs on account accident on P. R. R. It remained in the Pennsylvania railroad through lines until June 10, '71, when it ran between St. Louis and Columbus during the month of June, when it again ran between New York and Cincinnati. Was shopped at Altoona, August 20 to December 3, '71, painting, etc., and run between New York, Cincinnati and Louisville until June, '72, when it commenced running between New York, Oil City, and Erie, where it remained until October, '73, with the exception of some few trips in the through line. Shopped at Philadelphia nominally June 26 to March 12, '74, when it was shopped Altoona, gen-
590 eral repairs. Destroyed by fire in Pittsburgh at the great railroad riot, July 22, '77; settled for February 6, '80." Do you know what was received for it in that settlement? I will say to you it is not mentioned here.

A. I don't recollect.

Q. Does it appear in your list?

A. Yes, sir, at $7,762.

Q. I read now the history of the Richmond: "Received by transfer from St. Louis division, January 22, 1877; shopped Detroit, April 12, '77, for varnish and minor repairs; out; shopped January 25th, and transferred to St. Louis division, January 28, '78." The St. Louis division is not the Central division, of course, is it?

A. No, sir.

Q. Give me the subsequent history of the Richmond?

A. I don't know but what that ends our history of that car.

Q. If it ever got back into our division it would appear in your history, would it not?

A. Yes, sir. It does not appear in my record here as getting back into the division; but at the time that that was received here it was placed in the same line, taking the place of the car as specified. That was the rule that is followed in each case, that each car as received and went into the line to replace one of the old Central Transportation cars was done in that connection without respect to numbers or numerical order.

Q. Look at the history of No. 115, and see if it was ever in St. Louis division.

A. 115 was not.

591 Q. Then if the Richmond replaced 115, it replaced it for a few months only, and was then put back into the St. Louis division, another division, and staid there ever since; is not that so?

A. Probably so.

Q. Won't you tell me why you picked out the Richmond as a proper car to tender to the Central Transportation Company people?

A. Because it had actually performed the service in the line in which No. 115 had been running.

Q. Had it ever been in the line that No. 115 had for more than two or three months?

A. It does not make any difference if it was more than two or three months or not. By this time, these cars were all working on a mileage basis, and there wasn't any attention paid as to what line they were run in.

Q. Had not the Richmond been out of that line for over eight years before you tendered it to the Central Transportation people?

A. Yes, sir.

Q. Where was it at the time you made the tender—certainly not running in the Central division, was it—is not that so?

A. It was not running in the Central division.

Q. Did you arrive at that as a proper substitute from your own unaided brain, or did one of this unnamed crowd suggest it to you?

A. I arrived at that the same as I did at all the rest, because it had been received and actually performed the service in the same line that No. 115 had been running.

Q. When do you think that car was built? for history telleth not in this volume.

592 A. I haven't anything here to refresh my memory or to tell me when it was built.

Q. What would you say was a fair value for the Richmond at the time you tendered it to us in 1886?

A. My recollection of the Richmond is that that was a Pullman car, and there were very few Pullman cars that were built prior to 1870.

Q. Then it probably, when you tendered it to us, was about fifteen or sixteen years old?

A. I don't know. It might have been a '75 or '76 build for all that I know.

Q. What do you think it was worth in dollars and cents when you tendered it to us in '86?

A. I should say that the Richmond at that time was worth fully $12,000.

Q. Although it may have been fifteen or sixteen years old at that time?

A. I don't know its age.

Q. Even if it was fifteen or sixteen years old, you think it was worth $12,000 at the time it was tendered, do you?

A. No; I would not say that car was worth $12,000, because it was a walnut-finished car, and the railroad companies were at that time demanding a lighter wood or mahogany-finished cars.

Q. What do you think it was worth when you tendered it to us in June, '86?

A. I should say $10,000.

Q. Even if it was fifteen or sixteen years old, you say it was worth that?

A. I don't know anything about the age. I am satisfied that it was not fifteen years old, because I do not think we had any at that age.

593 Q. Suppose it was twelve years old—that it certainly was?

A. If it was twelve years old it would make no difference.

Q. It would be worth $12,000?
A. Yes, sir.
Q. Had it ever been remodeled?
A. I can't tell you that.
Q. Don't you know it was not remodeled; don't you know it started an open Pullman and always remained such?
A. That may all be, and still the car may have been remodeled.
Q. Would you say, as an expert in these matters, that that car, even though it may have been twelve years old, and probably was, and even though it had never been remodeled, was worth, when you tendered it to us in '86, $10,000?
A. Yes, sir. The question of remodeling is a very small question.
Q. Has the question of years nothing to do with it?
A. It is a question of the change of finish inside. You might term that remodeling without changing the plan of the car.
Q. But the question of age has nothing to do with a car as to its value, if it has been well kept up, has it?
A. Most assuredly.
Q. At twelve years old, how near its death is a car, if it has been well kept up—a car of the Richmond style?
A. Taking the average life of a car, it is within three years of its death.
594 Q. What would that car have been worth new, constructed as it was in June, '86?
A. I should say, in June, '86, constructed as it was——
Q. No, no, I mean if it was new constructed in that style, what was it worth in June, '86?
A. $11,500.
Q. Then twelve years' use would only have deteriorated it $1,500, in your judgment; is that so?
A. Hardly that. You cannot figure on it in that way, because that car, when it was new, at the time it was new, certainly cost not less than $16,000.
Q. But that won't do to compare those figures, because that was old times after the war. I have gotten your judgment that new, in June, '86, the car would have been worth $11,500, and that twelve years old it was worth $10,000; so that that twelve years' use, in your judgment, only deteriorated the value of the car $1,500; is that so?
A. Taking that way of figuring, yes.
Q. Now, let me ask you, generally, soaring above these details, what, in your judgment, was the average value per car of the sixty-three cars which you tendered us as substitutes in June, '86?
A. In June, '86, they were worth just what we could have replaced them for.
Q. But that leaves us in the dark. What, as an expert who can estimate the cost of repairs without seeing the cars, would you say was the value of these sixty-three cars?
A. They were worth between $11,000 and $12,000 apiece.

Q. What was their average age? Don't you think it was about twelve years?

595 A. Not so much as that. The average age, I should say, was between nine and ten years.

Q. Which of them was as recent as nine and ten years? Which one of them was built since '77?

A. It is impossible for me to remember that.

Q. Look at the history of these cars which I now hand you.

A. I would have to refer to the other books. I find, to the best of my recollection, that all of these cars were received prior to 1875.

Q. And some of them had been born away back in 1871, hadn't they?

A. Yes, sir.

Q. The bulk of them?

A. Yes, sir.

Q. So that most of those cars was about fifteen years old when you tendered them to us?

A. They were, because they were the cars that were brought in to take the place of the cars that the railway companies had condemned belonging to the Central Transportation Company.

Q. What would those sixty-three cars have been worth on an average, if they had been brand-new in June, '86?

A. They would have been worth $12,000 apiece.

Q. Then new those cars would have been worth $12,000, and being as they were of an age of from eleven to fifteen years, they were worth from $11,000 to $12,000 at that time?

A. For the reason that at the time of the transfer from the maintenance to the mileage basis, every car was made virtually the same as new at an expense of from $5,000 to $9,000 apiece.

596 Q. I will now take up seriatim the supposed substitutions. Turn to your list, if you please, and I think you will find that No. 122 is put there as a substitute for No. 1. Have you that list?

A. Yes, sir. (Producing same.)

Q. What does your list state was obtained for No. 1?

A. $7,000.

Q. We have already had the history of that car. What does your list state as the time when No. 1 went out of service and No. 122 went in?

A. No. 1 went out of service in 1874, and No. 122 went into service in 1870.

Q. I see by your history that that car No. 122, appears to have been shopped at Fort Wayne from April 9th to June 2, 1871, for varnishing, replating, reupholstering, etc. What is the usual cost of that sort of work?

A. Taking the length of time that was out from the shop on no paint, it would not amount to an average of $800.

Q. Then the next work is at Allegheny, from January 8th to February 18, 1872, varnishing, reupholstering, etc. What is the average of that, or the usual cost?

A. That would probably be the third, and it would run into a question of a thousand dollars of expense.

Q. That second one?

A. That second.

Q. Would it be more expensive than the first?

A. Yes, it would be more expensive than the first.

597 Q. Then, at Fort Wayne, from June 21st to July 1st, 1872, varnish, etc., and again at Allegheny, October 3d to 27th, 1872, varnish, etc. What would be the ordinary cost for what work was probably done on each of those last occasions, for varnish, etc.?

A. I would say that the expense that they were put to at that time would amount to, not to exceed $700.

Q. The two times?

A. Yes, sir; $700 each.

Q. I am not asking you the figures at that time, because probably they were higher, but what such work would cost now. I have no doubt that in 1872, it was more expensive than that. I am not getting at what the cost was then, but what such work would probably cost now. Then, at Fort Wayne, from November 21st, 1873, to February 14th, 1874, general repairs. That would be about what?

A. It depends entirely on the condition of the frame of that car. General repairs run from $2,500 up to $6,000.

Q. It was there, you see, for three months?

A. Three months; that would be ninety days. It must have required pretty extensive repairs, and the expense would run $3,500.

Q. Then shopped, Fort Wayne, from April 2d to August 6th, and lobby changed to L. D. room. What is L. D. room?

A. That is ladies' dressing-room.

Q. That would be about what, at present figures?

598 A. Does that say general repairs?

Q. This merely says, "Shopped Fort Wayne, from April 2d to August 6th, and lobby changed to L. D. room."

A. If that was all, it would be a question of an expense not to exceed $600; but, in all probability, it received varnish and other repairs, which might swell that amount up to $1,000.

Q. Then I see no entry, excepting "transferred to mileage basis May 1st, 1882." How would you account for no entry being made between those dates, or have you what will give us its history—we have it here in detail until 1874—between 1874 and 1882?

A. The car was shopped in August, 1875.

Q. Read that entry?

A. August, 1875, at Fort Wayne.

Q. Does it state for how long? Is that the whole of the entry?

A. Out of shop in November, the same year. It received what is termed minor repairs, but with the platforms altered.

Q. That would be, probably, at present figures, at what cost?

A. At present figures that would run $900; that is all. It was again shopped in July, 1876, at Allegheny. It was in from July 21st to August 22d, receiving minor repairs.

Q. That would be at about what cost?

A. At a cost of $600. It was shopped in April, 1877, at Fort Wayne. Had extensive repairs and new heater applied; a Baker heater applied.

Q. That would be about what?

599 A. Which included resilvering, replating of silvering. That would be an expense of $1,200. Next shopped at Allegheny on January 9, 1878, and was out the 31st of May, 1878.

Q. What sort of repairs?

A. That received minor repairs which ought not to be an expense of over $600. It was again shopped at the Meadows shop December 28th, and out the 31st of the same month with drawbars repaired, evidently on account of an accident.

Q. That would not count, then?

A. We would not count that in. June 18, 1879, it was shopped at Fort Wayne for extensive repairs, general repairs it is termed, and came out on December 30th of the same year. It received every requirement. The additions were new Hicks & Smith double-burner lamps. I would say that the expense of that would run up to $4,000. In 1881, May 3, it was shopped at Allegheny for extensive minor repairs, and came out in June, the 14th, with the report that all of those requirements had been completed, and by the list of requirements I would say that the expense would be $1,200. I have no further reports.

Q. I have here in this history this: "Transferred to mileage basis May 1, 1882. Stored at Altoona, October 3, 1882, unserviceable. Used in service, trip Knights Templar excursion, August, 1883, to San Francisco and again stored at Altoona September, 1883."

A. The repairs of that car coming out in June, 1881, seem to be the last repairs that were placed onto it, and that was about

600 the time they were being transferred from the maintenance to the mileage basis. That was one of the cars that was apparently unsatisfactory to the Pennsylvania railroad on account of its style.

Q. Let us take the next one, car No. 75. Turn to your list and tell me whether No. 125 was not put on by you as a substitute for that car, No. 75?

A. My memorandum shows that No. 123 was substituted for No. 75.

Q. Tell me when your memorandum puts No. 75 as going out of service, and when No. 123 as coming in?

A. No. 75 going out in September, 1878, and No. 123 as going into service in May, 1870.

Q. We have already put in the history of No. 75, but I neglected to ask you what was obtained for No. 75?

A. I cannot tell; my record does not show that.

Q. Now we will take No. 123, the history of which I will read: "This car was built by the Pittsburgh, Fort Wayne and Chicago railroad at Fort Wayne. Delivered March 1, 1870. A circular end, rotunda car. Assigned to the Fort Wayne and Chicago railroad. Commenced service in New York and Chicago line where it has since remained. It was shopped at Fort Wayne from June 5 to July 18,

1871, for painting, etc." At about what cost? "Painting, etc.," is the entry.

A. That would cost not to exceed $2,000.

Q. "Allegheny from April 11 to May 14, 1872, varnish, etc." That would be about what cost? That is from April 11 to May 14,

601 1872, two years after it went into service and less than one year after it went out. "Painting, etc."

A. That was light repairs. It would not exceed $600.

Q. "Allegheny from October 28 to December 7, 1872, varnish, etc.?"

A. The silver was replated; that expense would amount to $900.

Q. "Fort Wayne from August 15 to November 21, 1873; general repairs?"

A. I think that is a misentry.

Q. What do you find there?

A. This is minor repairs.

Q. Look while you are there also at this preceding entry of No. 122, Fort Wayne, from November 21, 1873, to February 14, 1874, general repairs?

A. No. 122 from November, 1873, to February, 1874. It had general repairs excepting a question of paint.

Q. With that modified what would you put the cost of No. 122 at?

A. That would amount, on account of the silver, to about $900 for No. 122.

Q. Now we will come back to No. 123, which was minor repairs from August 15th to November 21, 1873. At what cost would you put that?

A. It would be some $900.

Q. Then the next entry is "Shopped, Fort Wayne, January 24th; lobby changed to L. D. room." Shall we say the same thing for that, $600, and if varnished, $1,000?

A. Yes, sir.

602 Q. Give me the subsequent history of that? I have it to 1874, and the next entry here is when it was transferred to mileage basis in 1882.

A. It was next shopped at Fort Wayne, May, 1875. Came out in August of the same year, receiving minor repairs; new platforms, changed from the old style to Janney and hand rails replated.

Q. At what cost, would you say?

A. It was reupholstered and silver replated. That would be at an expense of $1,800. June, 1876, at Allegheny, from June 19th to July 20th, minor repairs, at an expense of $600. Next from January, 1877, to March of the same year, it got a new roof that year, and ladies' dressing-room changed. I would say that the expense of this shopping would amount to $1,500. Next in December, 1877, and out in January, 1878; changing platforms, new Baker heater, new head lining, and Baker heater applied, and silver replating, making very extensive minor repairs, in fact, general, excepting the question of paint.

Q. At what cost?

A. That would be at an expense of not less than $2,000. Shopped at Fort Wayne, February, 1879. Out in June 23, 1879. It was then thoroughly overhauled, including the scraping of the interior finish, renewal of panels, and renewal of the paint and varnish on the outside.

Q. At what cost would you put that?

A. According to this list I would say that could not be done for less than $2,500. Next at Allegheny in March, 1881, and out in April of the same year. Received varnish and minor repairs and many of the usual requirements. I would say that would
603 be at an expense of $900. In 1882 it was shopped for extensive repairs and remodeling, but not completed, and taken from shop and stored at Altoona.

Q. Then that was no cost, of course?

A. No, sir.

Q. And that is the total history of that car?

A. That is the total history of that car.

Q. "Transferred to mileage basis May 1, 1882. Stored at Altoona, October, 1882, unserviceable. Used trip to San Francisco, August, 1883, Knights Templar excursion, and again stored at Altoona, September, 1883." Let me ask you this general question: Are the best style of cars which are now being constructed more durable than the cars like those that we have just been considering, or not?

A. No; I would say not.

Q. How with regard to their requirement for repairs, wheels and trucks, for instance. Do they run longer now than then?

A. They run longer, but the question of expense of repairing would be even more than it was then, by reason of the finish; there is more carved work and a higher finish in the cars now than there was ten or fifteen years ago.

Q. Turn to your list and see whether for car No. 76 you have car No. 126 substituted?

A. Yes, sir; No. 126.

Q. What do you have as the date when No. 76 went out of service, and No. 126 went in?

A. No. 76 went out in 1877, and No. 126 went in in 1870.

Q. What do you have as being received for car No. 76?

604 A. $7,300.

Q. I will read the history of No. 76. "This car was built at West Philadelphia by Pennsylvania railroad. Delivered August 1, 1867. Silver palace car named New York. Has run in New York and Chicago lines. See 1869. Shopped at West Philadelphia from February 12 to March 25, 1871, for general repairs. Shopped at Philadelphia from January 20 to February 10, 1872. Had varnish and trucks repaired. Transferred to construction department November 23, 1872. Received from construction department June 26, 1873, from which time it has been running on the Pennsylvania Railroad line. Destroyed by fire in Pittsburgh at the great railroad riot, July 22, 1877. Settled for February 6, 1880." I will now take up No. 126 and read its history as I have it here: "This car was

built by the Pittsburgh, Fort Wayne and Chicago railroad at ——. Commenced service in March, 1870. An open Pullman car named 'Promontory.' Shopped at Fort Wayne from March 10 to April 21, 1871, varnish, etc." At what cost would you say that was? Look and see what that was?

A. It is best to look at the detail, because one item of a change would effect a difference of from $100 to $500. The cost would be $900.

(Mr. Dickson objects to this detail upon the ground that the primary question must be as to time and right of surrender under the terms as made, and if there be criticism to be made with regard to the particular cars tendered, it will be time enough then after
605 the decree to go into these details, and that these inquiries are not relevant as to the relief now sought.)

Q. Then at Allegheny from May 12 to June 10, 1872, varnish, etc.?

A. I would say $600 on this.

Q. Again at Allegheny from December 12, 1872, to January 18, 1873, for varnish, etc. Was reupholstered in February, 1873?

A. That would amount to $1,600.

Q. The two of them do you mean, including the reupholstering in February, 1873?

A. Yes, sir.

Q. "Shopped at Allegheny from January 27, to June 27, 1874, for varnish, replating silver, upholstering, etc." That is No. 126?

A. My record does not state that that car came out of shop in 1873, as receiving those requirements, but that it came out in June——

Q. This was 1874 when these large repairs were done?

A. That is what my figures cover.

Q. What does your record state about that in 1874?

A. It came out in June, 1874, receiving varnish outside and inside, replating silver, berths rehung, reupholstering, new aisle carpet, and regular minor repairs.

Q. That would be what?

A. That would be $1,600.

Q. Meadows from December 8, 1874, to February 16, 1875, varnish, etc.

A. That is only light repairs. That would not exceed $300.

606 Q. Give me the balance of the history of repairing?

A. Shopped at Fort Wayne in March, 1876, and out in September, 1876. That appears to have been a very thorough overhauling inside again and reupholstering, new carpet and heater, and silver-plated. I would say that expense would amount to $2,500. Shopped at Allegheny March, 1877, and out in April. That cost would amount to $900. The next is February, 1878, and out in March, 1878. That would be an expense of about $1,200.

Q. What does it say was done?

A. That received varnish outside and in, silver replated, pillows remade, overhauled, platforms, new battens, the removal of the

hinges on the seats and the application of sockets, new blocks to berths and safety cords applied, and Janney platforms and couplers applied. At Allegheny shop March, 1879, and out in May.

Q. At what cost would you say?

A. I would say $900. November, 1880, at Allegheny. Full list of requirements, coming out again in April, 1881. With that the car would cost $4,000.

Q. It was remodeled to a certain extent, was it?

A. Well, it was remodeled as far as the bunks were concerned, at that time. The plan was not changed. That is general repairs. In May, 1882, it was shopped at Pullman; it came out in November of the same year, receiving every known requirement, all modern improvements, No. 3 trucks with paper wheels, and new lamps.

607 The expense on that at that time would not amount to less than $7,000. It was shopped at Pullman, Illinois, October, 1883. That you can get the actual figures of if you so desire.

Q. I will take estimates even of those, so as to complete it, but of course we will correct them by the actual figures?

A. According to this list of requirements I would say it would cost $2,000. That completes the record. It was transferred to the St. Louis division May, 1884.

Q. There was nothing done between October, 1883, and the time of transfer, and it has never been on the Central division since then, as far as your record shows?

A. Not to my recollection.

Q. Your record does not show it? "Transfer-ed to mileage basis, May 1, 1882," completes this history?

A. It has not come back again.

Q. Your list puts car No. 128 as a substitute for our car No. 72, does it not?

A. That is right. No. 128.

Q. It puts No. 72 as going out of service when, and No. 128 as going in when?

A. No. 72 as going out in April, 1871, and No. 128 as going in in August, 1870.

Q. Does your list state what No. 72 realized?

A. $7,000.

Q. I will read the history as we have it of No, 72: "This car was built by Bolton, D. & Co. Delivered March 1, 1867, as a silver palace car. Run in New York and Cincinnati or Chicago lines.

608 Was shopped for general repairs at West Philadelphia April 20, 1869, and came out July 20, 1869. It was shopped at Altoona from January 2, 1871, to March 1, 1871, for painting and varnish and new sash, and from August 12th to September 6th, at Altoona for varnish outside. At Renovo from February 6th to 29th, 1872, for varnish, trucks and platforms repaired. It was chartered to Barnum's show from May 12th to November 4, 1872. It lay as extra in West Philadelphia yards from November 7, 1872, to April 3, 1873, when it was chartered by the Trans-Atlantic Museum. It was returned to Pittsburgh

August 2, 1873. It lay idle in West Philadelphia yards from August 1873, to April, 1874, when it was condemned and dropped."

I will now take up No. 128: "This car was built by the Pittsburgh, Fort Wayne and Chicago railroad. Commenced service in August, 1870. Assigned to this road. A D. D. room car." That means what?

A. A double drawing-room car.

Q. "Name, 'Fort Wayne.' Shopped at Allegheny January 2d to February 10th, and from July 18th to August 9, 1872, each time for varnish." What is the cost of those two varnishes, would you say, one from January 2d to February 10th and the other from July 18th to August 9, 1872?

A. The repairs are very light on that, and would not exceed $500.

Q. Each time?

A. No, sir.

Q. From May 3d to July 4, 1873, for varnish, etc., again?

A. That would be $900 that time.

609 Q. "At Allegheny from June 18, 1874, to February 1, 1875, painting and general repairs?"

A. The expense would be $1,500.

Q. "Has always run on the Pittsburgh, Fort Wayne and Chicago through lines." Take the subsequent history. Let me read something that perhaps will help you. "January, 1877, Pittsburgh, Fort Wayne and Chicago Company paid Pullman Palace Car Company $10,000 for repairs that would be necessary to put cars 128, 129, 130 and 131 in first-class order. Car then withdrawn from Pittsburgh, Fort Wayne and Chicago assignment and went to Elmira January 27, 1878, to be made into hotel car. Received from construction department July 20, 1878, and run in New York and St. line." That is St. Louis line?

A. That is St. Louis.

Q. Look at your record after 1875. Those two things would cover down to the time of getting it back from Elmira, I suppose?

A. No; the car was shopped at Allegheny in 1876, in April, and was out in May, within thirty days.

Q. At a cost of what?

A. That, with upholstering coming in, would cost $1,200. It was then shopped again in Fort Wayne in September, 1877. It came out of shop in January, 1878, but no repairs were made. It was then transferred to the construction department and remodeled into a hotel car.

Q. I suppose this allowance of $10,000 for the four cars was held and ultimately expended then on this remodeling?

610 A. That was expended on that remodeling. That was simply the estimate of the inspectors as to the amount of repairs that were due on that car.

Q. To make it what it was, in good order?

A. To put it into good running condition.

Q. Of the style of car that it was?

A. Yes, sir.

Q. Then that was used towards making it into a different and better style of car?

A. No; that was simply used in putting the car in proper condition.

Q. Do you think that money was spent and then——

A. And $8,000 more.

Q. But they did not spend the $2.500 in making repairs and then afterwards go and remodel, but they remodeled at once, using the money along with others to do it?

A. They used that money. I am very clear on this case. That $2,500 was considered the proper amount by the two inspectors, agreed to by them, to put the car into good running condition under the contract.

Q. What do you think was the cost of remodeling it into a hotel car?

A. As it made a pretty good row it cost $13,000 in round figures, according to the best of my recollection.

Q. Give me the history of repairs after the remodeling, that was in 1878, and the history of the car itself in fact. "Received from construction department, July 20, 1878" is the entry here.

611 A. It was shopped at Meadows in January, 1879, to have new wheels applied. Again shopped in Meadows to have springs renewed or repaired.

Q. At what cost would that be?

A. If the wheels were changed at that time that would be a cost of $1,000, or very near that. I will give you that exactly, that and springs $1,000. It was shopped at Elmira in December, 1879; came out in January, 1880.

Q. At what cost would you say?

A. According to these requirements it would not be less than $1,800. In Mantua shop October, 1880, and out November the same year. That would be a cost of $832. That figure I give as absolute shop cost. There is no profit to that.

Q. To your shop cost is added 10 per cent.?

A. Yes, sir; there should be.

Q. And the company 10 per cent. on top of that? That is the usual way of estimating repairs, is it not?

A. Yes, sir.

Q. The previous figures given have been at the charging price and not at the shop price?

A. Yes, sir.

Q. Your $832 is actual cost? Your previous figures have been your charging price?

A. Yes, sir.

Q. But there would be ten per cent. added to $832, and to that ten per cent. more to make up the usual charge?

A. No; added to this there should be ten per cent.

Q. Is your $832 the cost before you add your ten per cent., or after?

612 A. That is before.

Q. Then you add the shop ten per cent.?

A. That is what we charge on our books.

Q. The usual method is after that to add ten per cent. for Pullman Company account, is it not, or do you not know that?

A. No.

Q. I thought there were two ten per cents. added; one ten per cent. added at the shop to give your shop profit, and then in order to make your Pullman Company charge you put your ten per cent. on that aggregate. That is not so?

A. That is not so.

Q. There is only one ten per cent.?

A. There is only one ten per cent. added.

Q. Give me the balance of the history of that car after that.

A. It was shopped again at Mantua August, 1881.

Q. You are again giving me the shop cost without ten per cent. added now, are you not, this time?

A. Yes, sir. That would cost $1,300. Next is July, 1882; that is very extensive repairs; it cost $3,000. Next in March and April, 1883, $1,500. In 1884, January and February at the same amount, $1,500. It was transferred July 31, 1884, to the St. Louis division. I wish to say that the expense of putting a hotel car in order runs a little bit higher than other classes of cars; therefore the expense of the minor repairs on this car is a little more, that is on a hotel car, than it would be in an ordinary sleeper.

613 Q. When that was turned into a hotel car it was so thoroughly rebuilt that there was hardly anything left of the original; is not that so?

A. There was nothing. In fact, we could have built a new car for the same money.

Q. When it went into the St. Louis division will you look and see whether it ever got back into the Central division?

A. I know it did not.

Q. You have for car No. 85 car No. 129 as a substitute?

A. No. 129; and you can follow up No. 129 the same as 128; they are about identical.

Q. They had about the same amount of repairs?

A. Yes, sir.

Q. And at the same cost?

A. Yes, sir.

Q. And went into the St. Louis division at about the same time?

A. Yes, sir; all of them are the same.

Q. It has practically the same history, and they were all ultimately assigned at about the same time to the St. Louis division?

A. Exactly the same.

Q. No. 129 was the substitute for No. 85; No. 130 was the substitute for No. 77; No. 131 was the substitute for No. 78, and No. 132 the substitute for No. 47?

A. I am alluding now to Nos. 128, 129, 130 and 131.

Q. What date do you have No. 85 as withdrawn from the service, and what date No. 129 as put in?

A. No. 85 was withdrawn in 1874, and No. 129 was put in service in 1870.

614 Q. When do you have No. 77 as withdrawn from the service?

A. No. 77 withdrawn in 1874, and No. 130 put in in 1871.

Q. And No. 78 as withdrawn, when?

A. In 1874; and No. 131 put in in 1871.

Q. I will give you the history of No. 85: "This car was built by Jackson & Sharp. Delivered February 12, 1879. A silver palace car, with rotunda vestibule. Assigned to Pittsburgh, Fort Wayne and Chicago railroad, and run in the New York and Chicago lines. Was burned in the train near Plymouth, Indiana, December 23, 1870. Settled for September 16, 1874." What was gotten for that?

A. $11,900.

Q. I will read the history of No. 129: "This car was built by the Pittsburgh, Fort Wayne and Chicago railroad, at ——. Commenced service in August, 1870. A double drawing-room, named 'Crestline.' Shopped at Fort Wayne June 28th to August 5, 1871, varnish, etc. Allegheny, from February 15th to March 12th, and from September 13th to October 15, 1872, for varnish, etc. Was reupholstered in March, 1872. Shopped at Allegheny from November 20, 1873, to March 26, 1874, for painting and general repairs. Allegheny, December 31, 1874, for painting and general repairs. January 18, 1877, Pittsburgh, Fort Wayne and Chicago railroad paid Pullman Palace Car Company $10,000 for repairs that would be necessary to put cars Nos. 128, 129, 130 and 131 in
615 first-class order. Car then withdrawn from Pittsburgh, Fort Wayne and Chicago assignment. Went to Elmira to be made into hotel car. Received from construction department July 17, 1878."

I will now read the history of No. 77: "This car was built by the Pittsburgh, Fort Wayne and Chicago railroad at Fort Wayne, on some plan of their own. Compartment car. Delivered February 1, 1868, and sold soon to Central Transportation Company. First-class workmanship, but a worthless plan. She lay idle at Chicago from January to August, 1871, and run as extra from September 1871, to March 17, 1872, when it was shopped to May 2, 1872, for varnish and minor repairs. It ran as extra on P., Fort Wayne and Chicago lines until January 1, 1873, when it was dismantled, and lay at Allegheny yards until December, 1874, when it was condemned, and settled for October 16, 1875, at $7,000."

I will now read the history of No. 130.

A. That is virtually the same.

Q. That is exactly the same as No. 129, and the history of No. 131 is exactly the same as that of No. 130, saving that No. 130 commenced service February 2, 1871, and No. 131 commenced service February 5, 1871. I will read the history of car 78.

A. That is the same as that of No. 77.

Q. It is. It reads exactly the same as the other.

A. They are mates.

Q. "Condemned June 24, 1875, $7,000." Now, you put as a substitute for No. 47, car 132, do you not?

A. Yes, sir.

616 Q. When do you put No. 47 as withdrawn from service, and when No. 132 as going in?

A. No. 47 withdrawn March, 1871, and No. 132 as going in the service August, 1870.

Q. I will read the history of car 47: "This car was built by Bolton, Dykeman & Co. Delivered February 27, 1865, and run on Pennsylvania railroad. It has been named 'Keystone State.' Last running between Philadelphia and Renovo. Condemned and settled for March, 1871." What price was paid?

A. $7,000.

Q. The history of car 132 is as follows: "This car was built by the Pennsylvania railroad at Altoona. Commenced service August 22, 1872. A double drawing-room car named 'Cresson.' Assigned to the Pennsylvania railroad. Shopped at Altoona from January 14 to February 8, for varnish and minor repairs, on account wreck." That would not count, of course, and that the railroad would have to fix, would it not?

A. They would have to fix that.

Q. "Shopped at Altoona from October 21 to November 22, 1871, for varnish, etc." At what cost do you say?

A. Well, it ought not to exceed $600.

Q. "Shopped at Philadelphia from May 22 to June 4, 1872, for varnish, etc." That would be not to exceed $600?

A. I don't think so.

Q. "Altoona, from February 25th to April 5th, 1873, minor repairs on account wreck." We will strike that out because that was a wreck. "Was reupholstered in June, 1873."

617 A. That would be $350.

Q. "And shopped at Altoona October 7, 1873, to June 8, 1874, for painting, etc."

A. That cost $2,000.

Q. "Transferred to mileage basis December 9, 1879," completes the history here. Now, will you take up the repairs from June, 1874?

A. Shopped at Philadelphia shop October, 1875, and out in February, 1876.

Q. At what cost, would you say?

A. That is a $1,500 class of repairs. Next it was shopped at Meadows in January, 1877, and out in February.

Q. At what cost?

A. $900. Next is July, 1877, at Meadows, and out the same month. That ought not to be an expense of over $2,000. In 1878, in July, and out the same month, for automatic attachment.

Q. That was an improvement, was it not?

A. That was an improvement; yes, sir. In December, 1878, at Altoona, for extensive repairs, including new head lining and armrest, Janney couplers, etc. It came out in June, 1879. That cost over $4,000. I recollect that case pretty well.

Q. There was a partial remodeling, was there not, there?

A. Yes, sir; that had pretty near everything. It seems it did not

receive anything in 1880. It went into Elmira in January, 1881, and came out in April. The car then was virtually rebuilt, at a cost which can be easily determined, but I would say not less than $5,000. Next shopped at Mantua in November, 1881, for
618 minor repairs. That would be a $900 class of repairs. In August, 1882. That would be the same, $900. It was shopped at Pullman in January, 1883, for everything.

Q. At what cost?

A. $7,000.

Q. That was rebuilding, was it not?

A. That was just when we were taking all of the cars at that time and getting them in for general repairs, and virtually rebuilding or restoring them to as near new a model as possible. It was shopped at Mantua in June of the same year for new trucks at a cost of about $1,700. It was shopped at Mantua in December, from the 10th to the 24th, 1883. That would be a $700 class of repairs. The next is September, 1884, a $1,000 class of repairs. Shopped in July, 1885, at Pullman. According to my recollection that cost $6,000.

Q. Was it rebuilt then?

A. It was put in condition to be transferred to another division, another road, acceptable to the road.

Q. Which road?

A. Well, it is some road in the St. Louis division, I don't remember which.

Q. No road connected with the Pennsylvania system at all?

A. No, sir.

Q. And it went out of the service of that part of the Central division in which the Pennsylvania Company had any interest?

A. It went out; yes, sir.

Q. It was rebuilt so as to be accepted by those people?

619 A. Just the same as a new car.

Q. And ever since that it has remained in the service of that road?

A. It has been in the St. Louis division since May 13, 1886.

Q. Did it go back into the Central Transportation part of the Central division, or did it stay in the service of that road which it was made acceptable to?

A. It is still out there. I do not think the car has been returned. I cannot tell.

Q. You have as a substitute for No. 58, car No. 133, have you not?

A. Yes, sir; car No. 133.

Q. When do you have No 58 as going out of service and No. 133 coming in?

A. No. 58 went out in November, 1870, and No. 133 came in in September, 1870.

Q. I will read the history of No. 58: "This car was built by Bolton, Dykeman & Co. Delivered July 22, 1865, and run on Pennsylvania railroad. Named 'Juniata.'" Cut up in Altoona yards November 20, 1870. What was allowed for that?

A. $7,000.

Q. Now I will take the history of No. 133: "This car was built by the Pennsylvania railroad at ——. Commenced service September, 1870. A double drawing-room car, named 'Altoona.' Shopped Altoona, from February 8 to 22, and from September 23 to October 21, each time for varnish." That would be how much, about?

A. The repairs on that car are nearly identical with car 132.

620 Q. The history of that car ran very like that of No. 132?

A. Yes, sir. There is No. 132, 133, 134, 135, 136, 137, 138 and 139, built at Altoona, as you will notice, at the same time, the same class, and were treated about the same throughout.

Q. We will finish up this one. I will give you the history as I have it:

"Commenced service September, 1870. A double drawing-room car named 'Altoona.' Shopped Altoona from February 8th to 22d, and from September 23d to October 21st, each time for varnish. Pittsburgh from March 12th to 28th, and from October 17th to November 8, 1872, each time for varnish. Philadelphia, August 15, 1873, to January 24, 1874, varnish, replating silver, etc. Altoona from March 12th to 21, 1874; minor repairs on account of accident near Huntingdon, Pennsylvania railroad. Again at Altoona February 8, 1875, for painting and general repairs. Transferred to mileage basis August 6, 1880." Give me the subsequent history. Was that remodeled in the same way and put into the service of the other railroad at the same time as this preceding car No. 132? Without giving the cost, run through the history of the repairs.

A. They are just the same.

Q. It was remodeled and all?

A. We treated that car just in the same way and transferred it the same time. It run through Pullman at the same time and was transferred in May, 1886.

621 Q. I will go to the next one, which is No. 4. You have as a substitute for that No. 134. When was No. 4 withdrawn from service and No. 134 put in?

A. No. 4 was withdrawn in February, 1871, and No. 134 went in in September, 1870.

Q. I will read you the history of No. 4:

"This car was built at Altoona by Pennsylvania railroad. Delivered about the first of January, 1866, and went into the local line between Pittsburgh, Philadelphia and New York. Went to West Philadelphia shop in November, 1868, and came out as the 'Mayflower,' a silver palace car, February 1, 1869, and ran in the Chicago and New York lines, and sometimes in local Pennsylvania railroad lines. Shopped at Pittsburgh, Pennsylvania railroad shop, October, 1870, coming out November 18th, for painting and minor alterations, and ran in Altoona and Jersey City lines. No name. Was burned at Lockport, Pennsylvania railroad, February 23, 1871, and settled for." What price was gotten for it?

A. $10,000.

Q. I will read the history of No. 134.

A. That is the same as those other two that you have read. It winds up by being transferred to the St. Louis division in 1885.

Q. Car No. 135 you have substituted for our car No. 25?

A. Yes, sir.

Q. No. 25 went out of service when? and No. 135 went in, when?

A. No. 25 went out of service in February, 1871, and No. 135 went in in October, 1870.

622 Q. I will read the history of No. 25: "Built by Bolton, Dykeman & Co., Philadelphia, as car Y. Delivered August 20, 1864, and run on the Pennsylvadia railroad. Shopped at West Philadelphia, and came out April 1, 1869. Named 'Lackawanna,' a silver palace car. Shopped at Pittsburgh from November 18th to December 23d, for painting, etc No name. Burned near Mansfield, P., C. & St. Louis railroad, February 28, 1871. Settled for." At what cost?

A. That was settled for for $9,200.

Q. I will read the history of No. 135:

"This car was built by the Pennsylvania railroad. Commenced service in October, 1870. A double drawing-room car named 'Tyrone.' Was shopped at Altoona June 17, 1871, for varnish, etc. At Jersey City from May 3d to 20, 1872, for varnish, etc. At Philadelphia from May 7th to September 18, 1873, for general repairs. At Meadows from February 9th to April 17, 1875, for general repairs. Has always run on the Pennsylvania railroad through and local lines. Transferred to mileage basis August 26, 1879."

Now you have substituted for our car No. 10 car No. 136, have you not?

A. 136, yes, sir.

Q. When do you put No. 10 as withdrawn from service, and No. 136 as going in service?

A. No. 10 withdrawn September, 1870, and No. 136 in November, 1870.

Q. I will read the history of No. 10:

"This car was built at West Philadelphia shops, Pennsylvania railroad. Delivered September 1, 1865. Named 'Quaker
623 City,' and run on the Pennsylvania railroad local lines until condemned to be cut up in Altoona yards October 25, 1870. Settled for."

What price was paid?

A. $7,000.

Q. I will read the history of No. 136.

A. That is identically the same as that of the other four.

Q. "Commenced service November, 1870, on Pennsylvania railroad through lines." For car No. 7 you have as substituted car No. 137?

A. Yes, sir.

Q. Car No. 7 you have put in your list as going out of service when, and car No. 137 as going in when?

A. Car 7 went out of service December, 1870, and No. 137 went in in November, 1870.

Q. I will read the history of No. 7:

"This car was built at Altoona, Pennsylvania railroad shops. Delivered March 1, 1866, and run by Pennsylvania railroad on local lines. Named 'City of Lancaster.' Condemned and ordered cut up December 2, 1870, at Altoona. Jonah Woodruff states that this car was the successor in direct line, by rebuilding of the original car built under the Woodruff patent."

What was paid for that car?

A. $7,000, as near as I can get it from the record.

Q. You have as substitute for our car No. 49 car 138?

A. Yes, sir.

Q. No. 49 you have put in your list as going out of service when and No. 138 as going in when?

624 A. No. 49 as going out February, 1871, and car 138 as coming in February, 1871.

Q. I will give you the history of car 49:

"Built by Bolton, Dykeman & Co. Delivered March 29, 1865, and run on Pennsylvania railroad. In shop from April to August, 1868, for remodeling. Come out the 'Wissahickon.' Run between Williamsport and Oil City until February 23, 1871, when it was wrecked on the P. and E. railroad. Condemned in April, 1871. Settled for June 29, 1874."

What was paid for that?

A. I expect the same price as the other, $7,000.

Q. It was wrecked; that would be $10,000, would it not?

A. No; this record here says $7,000.

Q. I read the history of No. 138. The shopping history is the same, we will take it.

A. Just the same as No. 137.

Q. It says: "Was built by Pennsylvania railroad. Commenced service in February, 1871. Named 'Highland.' It has always run on the Pennsylvania railroad through lines." You have, as substituted for our car No. 50, car 139, have you not?

A. Yes, sir. No. 50 went out of the service in April, 1871, and No. 139 went into service January, 1871.

Q. The history of No. 50 is as follows: "Built by Bolton, Dykeman & Co. Delivered March 29, 1865, and run on the Pennsylvania railroad. Shopped for remodeling from August to November, 1868. Came out the Delaware, and run in the

625 P. & E. railroad between Williamsport and Oil City, until April, 1871, when it was condemned and settled for." What cost was allowed?

A. That is one of the same settlements.

Q. $7,000, you think?

A. As far as I recollect, $7,000.

Q. I will read the history of No. 139.

A. That is just the same.

Q. "Commenced service January, 1871." But then it has no history until I come to "shopped at Meadows September 27th, 1885, etc."

A. The history is the same as the rest of them, and it is only

transferred in 1886 with the six of them altogether, to the St. Louis division.

Q. You had the other in the Central division. You put it that several of these cars were transferred to the Central division, but not in our part of the division?

A. You misunderstood me.

Q. The cars that we have last been talking about all went to the St. Louis division.

A. All went to the St. Louis division, except No. 135.

Q. No. 136, 137, 138 and 139, went into the St. Louis division and remained there?

A. Yes, sir.

Q. They went in when? In 1885?

A. 1885 and 1886.

Q. Now you have, as substituted for our car No. 17, car No. 140, have you not?

A. I have.

Q. You have No. 17 as going out of service, when?

626 A. January, 1871, and 140 as going in February, 1871.

Q. I will read the history of car 17: "This car was built by J. R. Bolton, Philadelphia, and delivered as car Q, March 7, 1863, and run on Pennsylvania railroad. This car was broken up in Pennsylvania yards, Altoona, Penna., September 17, 1869. Value of car credited P. P. Car Co. on account, in settlement made at Altoona, December, 1870." What was the amount credited?

A. $7,000, as I recollect.

Q. I will read the history of No. 140.

A. That is the same as the other.

Q. And went through the same course, did it?

A. Exactly.

Q. No. 140 then went through the course of the last car that we have been referring to, and was put into the St. Louis division in 1885, and has stayed there ever since?

A. Put in in May, 1885.

Q. And has stayed there ever since?

A. Yes, sir.

Q. I will give you the history of car 140: "This car was built by Pennsylvania railroad; has always run on the Pennsylvania railroad through lines." You have as substituted for our car No. 19, car 141, have you not?

A. Yes, sir.

Q. No. 19 went out of service when?

A. February, 1871, and No. 141 came in in October, 1870.

Q. The history of No. 19 is this: "This original car was

627 broken up in Philadelphia yard, May 11, 1869, and the present car built at Altoona, after plan prepared under supervision of A. J. Cassatt, superintendent of motive power, Pennsylvania railroad. Came from shop June 16, 1870, and has since run on the New York and Cincinnati lines. Was shopped at Altoona from January 1st to 14, 1871, for varnish, etc. Was burned near

Mansfield, P., C. & St. Louis railroad, February 28, 1871. Settled for." What was allowed for that?

A. Just the same.

Q. $7,000?

A. Yes, sir. Understand, that settlement was all made in a lump; the whole business together.

Q. Do you know what the circumstances of that settlement were?

A. H. R. Pierson made that settlement according to my recollection, but I have not got that in mind sufficiently to give any information. He was then vice-president.

Q. Is Mr. Pierson alive?

A. I don't know whether he is. I have not heard of him for a long time.

Q. The history of 141 is this: "This car was built by the Detroit car works and assigned to Allegheny Valley railroad. Commenced service, October, 1870." Is the Allegheny Valley railroad part of the Central Transportation Company's share of the Central division?

A. It is not.

Q. "And assigned to Allegheny Valley railroad. Commenced service October, 1870. A double drawing-room car named 'Westfield.' Shopped at Pittsburgh from May 10th to 29th, and
628 from November 2 to 26, 1871, both times for varnish. Pittsburgh from January 27th to 30th, for minor repairs on account of accident on Oil Creek and Allegheny railroad. It was shopped at Corry from August 3d to September 14, 1872, varnish. Again at Pittsburgh from July 21st to November 4, 1873, painting and general repairs. It was housed at Verona from January, 1874, until February, 1875, when it again commenced running on the Allegheny Valley railroad. Remodeled to plan 17 F at Verona, 1879." Give me the subsequent history of that car?

A. It was shopped for remodeling and general repairs in June, 1879. It was shopped at Verona in July, 1881, and in March, 1882, for minor repairs. In Verona again from August, 1883, to January, 1884. Again in November, 1884, at Verona shop and out in January, 1885. That was extensive repairs. It was shopped again in Verona for light repairs in March, 1885, and again in October of the same year. In 1886 it was sent to the Pullman shops and put in charge of the construction department.

Q. What time in 1886?

A. In October, 1886. It got everything.

Q. What division was it running in?

A. The Central division. And returned to the Central division and of course as a wild car run on the Allegheny Valley, or rather on the Central Transportation Company's lines.

Q. It has been an Allegheny Valley railroad car right along?

A. Well, it has been, but now it is not any more.

Q. After it was remodeled in 1886?

629 A. After this last time in 1886, then it was a wild car. It was transferred from the maintenance to the mileage basis with this last shopping.

Q. But before that it was kept on the Allegheny Valley railroad?

A. Yes, sir.

Q. You have as substituted for our car No. 20 car 142, have you not?

A. Car 142; yes, sir.

Q. No. 20 went out of service, when?

A. No. 20 went out of service May, 1871, and No. 142 went into service in September, 1872.

Q. The history of No. 20 is this: "This car was built by J. R. Bolton, of Philadelphia, and delivered as car T August 1, 1863, and run on the Pennsylvania railroad. Shopped at Pittsburgh December 22, 1868, and came out May 1, 1869. A ten-section silver palace car, named 'Gem.' Remained in through line, New York, Louisville, Cincinnati, etc., and local lines, Pennsylvania railroad, until May, 1872, when it was condemned and settled for." What was paid for it?

A. That was on the same settlement, $7,000.

Q. That was on the basis of being in lieu of further repairs, and then the Pullman Company of course kept the car for its old material?

A. No; my recollection of that was that all of those cars that were settled there at $7,000, the Pullman Company had nothing to do with. That was a clean settlement, and the Pennsylvania railroad took the cars. I know I had nothing to do with the scrap part of it.

Q. That was one settlement made at one time, was it, covering about how many cars?

630 A. Well, that I can't recollect now.

Q. It was almost immediately after the Pullman Company took charge, was it not?

A. I think the settlement was in 1872 or 1873. It started in the negotiations right along, of that same year, you might say, the fall of 1870.

Q. Commenced and ended about 1872?

A. Because, as you will see by this, all of the cars that we received from the Central Transportation Company, excepting those that were built in 1869, were virtually unserviceable, or rather unsatisfactory to the Pennsylvania railroad in 1870.

Q. I will read the history of No. 142: "This car was built by the Detroit car works, and assigned to A. V. railroad. Commenced service December, 1870. A double drawing-room car. It remained on the Allegheny Valley railroad until December 21, when it was totally wrecked on the Allegheny Valley railroad, near Foster Station. The construction department took up the number, building the present No. 142, at Altoona, and delivered to transportation department, September 1, 1872. Assigned to Pennsylvania railroad. A. S. D. room car, named 'Brockton.' Has always run on the Pennsylvania through line. Remodeled to plan 26¼, 1877. Transferred to mileago basis August 2, 1880." What does that mean, "and delivered to transportation department, September 1, 1872. Assigned to Pennsylvania railroad. A. S. D. room car, named 'Brockton.'"

It was named that when it was assigned to the Pennsylvania railroad?

631 A. It was named the "Brockton," and turned over from the construction department to the transportation department at that date, in 1877. Then it was made just the same as a new car, as near as they could do it.

Q. Will you give me the history from 1877, when it was remodeled?

A. It was shopped at West Philadelphia in September, 1878, coming out in October.

Q. For slight repairs that was, was it?

A. Yes, sir; that was for minor repairs. Then in September, 1879, at Meadows, for general repairs, coming out in 1880. It was shopped at West Philadelphia during the months of February and June, coming out in June of 1881, that was general repairs, at which time it was virtually rebuilt and turned over from a maintenance to a mileage basis. The average cost of those was $6,200. It was next shopped at Mantua in 1882, for extensive minor repairs. Again, at Mantua, November, 1882, for the same class, and next shopped at Pullman, in October, 1883. That was for everything on the list. Next shopped at Mantua, in October, 1884. That was for pretty extensive minor repairs. Next shopped in July, 1885, at Elmira. That was for minor repairs, pretty extensive too. Next, in February, 1886, and come out and was transferred to the Southern division.

Q. Has it ever since remained there?

A. That was in March, and returned back to the Central division in May, 1886.

Q. What has been the subsequent history?

A. It is now running in the service.

Q. Still running in that division?

632 A. Still running in the Central division.

Q. You have as substituted for our car No. 21, No. 143, have you not?

A. Yes, sir; No. 143.

Q. No. 21 went out when?

A. January, 1871, and No. 143 went in October, 1870.

Q. The history of No. 21 is as follows: "Built by J. R. Bolton of Philadelphia, and delivered as car U, September 12, 1863. Remodeled with wide berths, iron columns, etc., probably in 1867. It was named 'Duquesne.' Always run in Pennsylvania Railroad lines and was cut up in Altoona yard in 1870." At what price was that settled for?

A. That was on the same settlement.

Q. $7,000?

A. Yes, sir.

Q. The history of No. 143 is as follows: "This car was built by the C. & N. W. railroad at Fond du Lac, and assigned to the Vandalia railroad. Remodeled to plan 19½ April, 1878." The Vandalia railroad was one of the lines with which the Central Transportation had a contract which it turned over, was it not?

A. No. That was not one of the Central Transportation lines.

Q. Give me the subsequent history of car 143. Did it ever get into the Central division at all?

A. It has always been in the Central division.

Q. The Vandalia railroad is part of the Central division?

A. Part of the Central division.

633 Q. Did it ever get on the Central Transportation part of the Central division?

A. It did, and is still running on that.

Q. When did it get off the Vandalia and on to that?

A. I can't give you that from any record here, because that car first was running on the local between St. Louis and Cincinnati, and then it would run from St. Louis to Columbus, and again in the through line. It would be mixed in right along.

Q. Then it sometimes got into the Central division and sometimes out of it?

A. Sometimes it would be in the Central division maybe for two or three runs, and then it would go in the local run for two or three trips.

Q. The local run out of the Central division?

A. The local run would be the Vandalia line, but it is the Central division all the same.

Q. The Vandalia railroad is one of the railroads now occupied by the Pennsylvania railroad?

A. It is.

Q. Do you know how long the Pennsylvania railroad has been running it?

A. I should say twelve or thirteen years.

Q. In making out the credit of receipts to the Central Transportation Company, the Vandalia receipts have not ever been credited, have they?

A. I think the Vandalia receipts were credited in that.

Q. Do you know how many sleeping cars were run over that railroad?

A. Well, we have two lines between New York and St.

634 Louis which run over the Vandalia. We have, then, a line from St. Louis to Cincinnati that runs over the Vandalia, and another one that runs to Chicago on the Illinois Central and the Vandalia.

Q. You have our car No. 34 as having had car 144 substituted for it, have you not?

A. Yes, sir.

Q. What is the date that No. 34 went out?

A. December, 1871, and No. 144 came in in December, 1870.

Q. The history of car 34 is this: "Built by Bolton, Dykeman & Co., and delivered October 20, 1864, run on Pennsylvania railroad, etc. Was remodeled at West Philadelphia, coming out March 18, 1870, as a silver palace car, of which it is the poorest specimen. Has run in through local Pennsylvania lines until December, 1871, when it was condemned and settled for." That was paid for at $7,000, also, was it?

A. That is one of the same lot, the same settlement, yes, sir.

Q. I will read the history of No. 144.

A. It is the same as that of No. 143. They were built at the same time.

Q. "Built by C. & N. W. railroad. Assigned to Vandalia line. Commenced service December, 1870. Remodeled to plan 19½ October, 1878." That has been in and out the Vandalia line in that time?

A. Just the same as No. 143, and now running on the Pennsylvania line.

Q. When was it put on the Pennsylvania line?

A. It has been on it ever since.

635 Q. In that way?

A. Yes, sir; in that way.

Q. You have car 145 substituted for our car No. 41, have you not?

A. Yes, sir.

Q. No. 41 went out of service, when?

A. January, 1871, and No. 145 went in October, 1870.

Q. The history of No. 41 is as follows: "This car was built by Bolton, Dykeman & Co. Delivered November 28, 1864. Run on the Pennsylvania Railroad line. Was broken up in the yard at Altoona, December 21, 1869. Value of car credited to Pullman Palace Car Company on account of settlement made December, 1870, at Altoona." That was for $7,000 also, was it not?

A. That is one of the same lot.

Q. Mr. Weckerley calls my attention to a discrepancy. It was really broken up December 21st, 1869?

A. I don't think this car was broken up, because Dick Johnson ran that car the early part of 1870.

Q. I will read the history of car No. 145: "This car was built by Harlin & Hollingsworth. Delivered October, 1870. Assigned to Pennsylvania railroad. A. S. D. R. car named 'Iowa.' Commenced service in the Philadelphia and Pittsburgh line. Shopped at Philadelphia from June 2 to June 10, 1871, for varnish. Again at Philadelphia December 27, and January 12, 1872. Commenced running in the through lines in March, 1872, where it has since remained.

Shopped Philadelphia December 16, 1872, to January 28,

636 1873, varnish, reupholstering, etc. Again at Philadelphia, December 23, 1873, to March 27, 1874, varnish, reupholstering, silver, etc. Plan changed to 19½ July 25, 1879. Transferred to mileage basis July 24, 1879." Give me the subsequent history of that car after the remodeling or the changing of the plan to 19½ in July, 1879.

A. In July, 1879, it was remodeled, and received everything at the West Philadelphia shop, at a cost of $6,200. It was next shopped at Harlan & Hollingsworth's shop in February, 1880, and out in March. That was for minor repairs. Next in April, 1881, pretty extensive repairs, but no painting.

Q. Minor and general; what do you call those repairs?

A. Extensive minor repairs. Shopped at Columbus January, 1882. That was for minor repairs. Shopped at Mantua December,

1882. That was for pretty extensive repairs. That was minor as far as paint is concerned; it is general in other parts. Shopped again at Mantua for new trucks June, 1883, and again at Mantua in November, 1883. That was extensive repairs made so as to interchange and run over the Southern gauge. In January, 1874, it was in Ludlow shop for general repairs, I think. In June at Mantua for minor repairs, and in November, 1884, it went into Pullman for everything. When it came out it was transferred to this Southern division, running there for less than a month, when it was returned to the Central division. It was next shopped in July, 1885, at Elmira, for minor repairs. Shopped in February, 1886,
637 for minor repairs, and it was transferred to the Southern division in March, and returned back in May, 1886. That car is still in the division.

Q. You have as substituted for our car No. 56 your car No. 146, have you not?

A. Yes, sir.

Q. No. 56 went out when, and No. 146 came in when?

A. No. 56 went out January, 1871. Car 146 came in October, 1870.

Q. I will read the record of car 56: "This car was built by Bolton, Dykeman & Co. Delivered May 12, 1865, and assigned to Bellefontaine railroad, and run on Pennsylvania railroad. Named 'Valley Forge.' Cut up in Altoona yard December 6, 1870." $7,000 was allowed for that, also?

A. That is one of the same settlement, I believe.

Q. The history of car No. 146 is as follows: "This car was built by Harlin & Hollingsworth. Delivered in October, 1870. Assigned to the Pennsylvania railroad. Commenced service in the Philadelphia & Pittsburgh line. A. S. D. room car named 'Saranac.' Shopped at Philadelphia from June 16 to 26, varnish, etc., and from January 29 to March 12, 1873, varnish, reupholstering, etc. Again in Philadelphia from December 23, 1873, to February 10, 1874, varnish, etc. Altoona, from November 10 to April 30, 1875, for painting and general repairs. It has always run on the Pennsylvania through and local lines. Remodeled to plan 19½ Octo-
638 ber, 1878. Transferred to mileage basis June 24, 1879." Give me the history of that after the remodeling in October, 1878?

A. That was shopped at West Philadelphia in June, 1879. That was extensive repairs and some new lamps put into it; extensive and minor repairs. At Mantua, in June, 1880. That was what are termed minor repairs. In April, 1881, the same class, minor repairs. In January, 1882, minor repairs, and in December, the same year extensive minor repairs. In March, 1883, the same class, and in November, 1883, the same class of repairs. In August, 1884, for everything at Pullman. Transferred to the Southern division March 1, 1885.

Q. Has it continued there?

A. I cannot tell that from memory.

Q. It would show in your books whether it ever came back, would it not?

A. It did not come back in 1886, or the book would show it.

Q. Then, if it came back at all, which you do not know, it must have been after 1886?

A. According to this record, yes, sir.

Q. Now you have as substituted for our car 102, No. 147, have you not?

A. Yes, sir; 147.

Q. Car 102 went out when?

A. January, 1871. Car 147 came in October, 1870.

Q. The history of car 102 is as follows: "This car was built by Bolton, Dykeman & Co. for the Southern Transportation Company as car 5. Bought by the Central Transportation Company,
639 March 1, 1869, named 'Youghiegheny,' and kept on Pennsylvania railroad. Condemned and cut up in West Philadelphia yard, December 31, 1869. Value of car credited to Pullman Palace Car Company, on account, in settlement made in December, 1870, at Altoona." That value was $7,000?

A. That would be the same.

Q. The history of car 147 is as follows: "This car was built by the C., B. & Q. railroad. Commenced service ——, ——. Assigned to Vandalia line. An open Pullman car with organ and desk. Named 'Westerly.' Shopped at Terre Haute from February 2 to 21 and from September 27 to November 29, 1872, varnish, etc. Again at Terre Haute, from October 17 to July 13, for painting and general repairs. Has always run on the Vandalia local line. February 15, 1877, transferred to the construction department at Detroit. Returned to the operating department June 12, 1877, and reassigned to the Vandalia line. Remodeled to plan 43, June 18, 1877. Transferred to mileage basis October 2, 1881." Give me the history of that after the remodeling in 1877?

A. It was shopped for minor repairs in December, 1878. Again for the same class in December, 1879. For general repairs in October, 1881. It got everything then. It got minor repairs at Mantua in February, 1882. Minor repairs in March, 1883. Minor repairs in November, 1883. General repairs at Pullman, August, 1884. Extensive minor repairs in July, 1885, and extensive repairs in May, 1886.

Q. Was it always kept in the Vandalia local line?

640 A. No; that has been running in the through and local lines between New York, Cincinnati and St. Louis.

Q. In the Central division?

A. Yes, sir; in the Central division.

Q. And is still running there?

A. According to this record it was transferred to the Chicago division May 17, 1886.

Q. That is outside of the Central division?

A. That is outside of the Central division.

Q. And has remained in the Chicago division, as far as you know, ever since?

A. According to this record.

Q. Now you have as substituted for our car No. 18 your car No. 148, have you not?

A. No. 148; yes, sir.

Q. No. 18 went out when?

A. February, 1871, and No. 148 went in in May, 1870.

Q. The history of No. 18 is as follows: "This car was built by J. R. Bolton, Philadelphia, and delivered as car R, March 17, 1863, and run on the Pennsylvania railroad. In April, 1867, this car came from Pittsburgh shops with iron columns and double upper berths, being the first car so treated, and a pattern for others following. Named 'Iron City.' It was afterwards run on Pennsylvania railroad, and on Cincinnati through lines. It was cut up in Altoona yard October 18, 1870." What was gotten for that? $7,000 also?

A. I think that was one of the same settlement.

Q. The history of No. 148 is this: "This car was built by the Hannibal car works."

641 A. It is the same as No. 147.

Q. "Commenced service on the Vandalia railroad. An open Pullman car with organ and desk, and assigned to Vandalia line. Transferred to construction department at Detroit, February 15, 1877. Returned to operating department June 12, 1877, and reassigned to Vandalia line. Remodeled to plan 43, June, 1877. Transferred to mileage basis, October 1, 1881." Was that also put into the Chicago division?

A. That followed just the same as No. 147, excepting that it was not transferred out of the division. It is still in the division according to this record.

Q. Kept in the Vandalia, or what?

A. Oh, kept in the lines here. I have seen it within a short time running here out of Philadelphia.

Q. You have as a substitute for our car No. 92 your car No. 169, have you not?

A. 169; yes, sir.

Q. No. 92 you say went out of service when?

A. March, 1872, and No. 169 went in October, 1873.

Q. The history of No. 92 is as follows: "This car was built by the C. C. & I. C. railroad at Columbus, Ohio. Delivered June 25, 1869. A silver palace car. Named 'Jeffersonville.' Assigned to Pennsylvania railroad. Commenced service in the New York and Louisville line. Was shopped at Altoona from June 29 to September 9, 1871, for general repairs. Was shopped at Philadelphia from

642 February 6 to 28, 1872, for varnish, etc. Was wrecked on Pennsylvania railroad, March 22, 1872." What was received for that?

A. I have no means of knowing what was received.

Q. I have this history of car No. 169: "This car was built by P. R. R. Commenced service in March, 1871. Name, 'Conewaga.' Assigned to Allegheny Valley railroad. A double drawing-room car. Shopped Altoona from October 23 to November 9. Name changed to 'Conemaugh' Shopped Altoona from October 23 to

November 15, 1871. Commenced running on the Allegheny Valley railroad in 1872, where it remained until January 17, 1873, when it was totally wrecked on the road and transferred to construction department January 17. Out October 16, 1873. It lay idle the balance of the month at Allegheny Valley railroad shops, waiting for equipment; new single drawing-room car named 'Titusville.' It run on the Allegheny Valley railroad during November and December, 1873, when the line was discontinued. To the car-houses at Verona until May, 1874, when it again commenced running on this road, and was shopped from October 10 to 22. Again from February 23 to March 20, 1875, varnish, etc." Give me the subsequent history of that car from 1875.

A. In shop February, 1875, for minor repairs. March, 1876, same class. In May, 1877, minor repairs. From September, 1877, to January, 1878, for general repairs. October and Novem-
643 ber, 1878, for minor repairs. From July to October, 1880, for general repairs. In 1881, from January to May, general repairs. In 1882, December, general repairs. Out June, 1883. From July, 1884, to October, for general repairs again. It went into Verona shop in April, 1885, for minor repairs. From August, 1886, to November it was in at Pullman for everything, at which time it was transferred from the maintenance to the mileage basis.

Q. Has it been running in the Central division all the time?

A. Yes, sir.

Q. It never got out of that?

A. Never got out of that.

Q. You substituted for our car 105 No. 180, did you not, on your list?

A. Yes, sir; 105 went out of service in October, 1875. No. 180 came into service November, 1871.

—The history of car 105 is as follows: "This car was built by the Little Miami railroad at Columbus, Ohio. Delivered October 18, 1869. A silver palace car, assigned to P. C. & St. Louis railroad. Commenced service in the New York and Cincinnati line. Was shopped at Altoona from May 16 to May 20, 1871, for repairs to trucks. At Columbus December 8, 1871, for painting and general repairs. At Columbus, again, from February 3 to May 14, 1873, for varnish, etc. At Columbus, from June 13 to 25, 1874, for repairs to trucks. It lay at Cincinnati from June 1 to December, 1874, when it was condemned, and is now being used by P. C. & St. Louis Company as coach. Settled for October 10, 1875, at $7,000."

644 The history of No. 180 is as follows: "This car was built by the Pennsylvania railroad at Altoona. Commenced service November 15, 1871. Assigned to Pennsylvania railroad. A single drawing-room car, named 'Knoxville.' Commenced service in the New York and Louisville lines. Shopped at Harlin & Hollingsworth's, Wilmington, from December, 1871, to January 10, 1872. Was in accident at North Penn Junction, Pennsylvania railroad, December 6, 1872, and shopped at Philadelphia until March 12, 1873, for varnish and repairs, on account of accident. Again, at Philadelphia, from December 23, 1873, to April 29, 1874, for var-

nish, replating silver, etc. Has always run on the Pennsylvania through lines. Plan changed to 26¼ July 5, 1879. Transferred to mileage basis July 2, 1879." That remained in the service ever since then of the Central division?

A. Yes, sir.

Q. Look at your record and see whether there has been any remodeling done since 1879.

A. Yes, sir; in 1881 it got new trucks with paper wheels, remodeling of the running gear. No other remodeling. That is a good plan of car, and is still standard.

Q. You have substituted for our car 24 car 184, have you not?

A. Yes, sir.

Q. Car 24 going out when, and 184 coming in when?

A. Car 24 going out May, 1871; car 184 coming in November, 1872.

Q. The history of car 24 is this: "Shopped at Allegheny
645 March 23, 1870, and cut up in May, 1871, and settled for. Run on the Pittsburgh, Fort Wayne and Chicago railroad." That was settled for at $7,000 also?

A. I do not know.

Q. It probably was?

A. I have no recollection of that at all; no notice.

Q. The history of car 184 is as follows: "This original car was built by the P., Fort Wayne and Chicago railroad, Allegheny. Delivered November 6, 1871. Assigned to the Pittsburgh, Fort Wayne and Chicago and Pullman. Name, 'Mansfield.' Commenced service in the Chicago and Pittsburgh lines, where it remained until March 21, when it was destroyed by fire near Fort Wayne, Pittsburgh, Fort Wayne and Chicago railroad. Was replaced by car 265, the railroad company paying Pullman Palace Car Company cost price of 184 and its equipment. No. of 265 changed to 184. Shopped from July 10 to August 22, 1873, varnish, etc. Again, from August 12 to September 22, 1874, varnish, etc. Remodeled to plan 26¼ May 18, 1879. Transferred to mileage basis May 1, 1882." Has that also been running on the Central division?

A. Yes, sir.

Q. Was there any remodeling of that car?

A. Nothing, except a change of car trucks.

Q. For our car 68 you have marked as substituted car 185, have you not?

A. Yes, sir; car 68 went out of service in March, 1871, and 185 came in November, 1871.

646 Q. The history of car 68 is as follows: "Delivered February 14, 1866. Assigned to Pittsburgh, Fort Wayne and Chicago railroad, named 'Altoona,' and ran up to March 23, 1870, when cut up in Allegheny yard and a new car, an open Pullman, built to replace it." What was received for that car?

A. Nothing. An open Pullman was built to replace it.

Q. Some one must have paid for that, did they not? It was cut up in the Allegheny yard and a new car built to replace it?

A. Well, I think the Fort Wayne railroad built the new car to replace it. Instead of repairing that car, they built a new one.

Q. The history of car 185 is this: "This car was built by the Pittsburgh, Fort Wayne and Chicago railroad at Allegheny. Delivered November 7, 1871. Assigned to Pittsburgh, Fort Wayne and Chicago railroad. An open Pullman car named 'Massillon.' Commenced service in the Chicago and Pittsburgh lines, where it remained until April, 1872, when it commenced running in Pittsburgh, Fort Wayne and Chicago railroad through lines. Shopped at Allegheny from June 10th to July 5, 1872, for varnish, etc., and from April 21st to May 23, 1873, varnish, replating, reupholstering, etc. Again at Allegheny from March 24th to May 23d, for varnish, replating, reupholstering, etc. Remodeled to plan 27¾, August, 1879. Transferred to mileage basis May 1, 1882." About what would be the cost of remodeling to plan 27¾?

647 A. It would cost about $900.

Q. Was there ever any other remodeling of that car?

A. Nothing, except the change of trucks.

Q. Did that always continue in the Central Transportation service?

A. It has and still is.

Q. You have substituted for our car 3 your car 186, have you not?

A. I know we have. That record shows that is a clean substitute?

Q. The history of car 3 is as follows: "This car was built and delivered October, 1864. Run in the New York and Washington line. Transferred to the Pennsylvania and Philadelphia and Erie railroad in 1869. Run on local lines of the two roads, and condemned and cut up when shopped at Renovo in March, 1870. Car built to replace it, No. 186, name 'Renovo.'"

The history of car 186 is this: "This car was built by the P. & E. Railroad Company at Renovo. Delivered May 23, 1871, and assigned to P. & E. railroad, an open Pullman car named 'Renovo.' Built to replace car No. 3. Commenced service in the Harrisburg, Erie and Oil City line. Shopped at Philadelphia from July 29th to September 18, 1872, varnish, etc., painting and general repairs. At Philadelphia from December 11, 1873, to January 24, 1874, varnish, etc. At Philadelphia from July 21st to August, 1874, varnish, etc. Continued running between Harrisburgh, Erie and Oil City until June, 1872, when the line was extended to New York

648 and run between those points until October, 1873, when the line was changed to the Philadelphia and Erie line, where it has since run. Transferred to mileage basis September 1, 1879." Was there ever any remodeling done to that car 186?

A. Yes, sir.

Q. When and to what extent?

A. That was remodeled at the time of the transfer from maintenance to mileage basis.

Q. Into what sort of plan? From plan 27 to 23 B, September 27, 1879?

A. Yes, sir.

Q. At what cost would that be?

A. Just the simple remodeling would be about $900. In addition to that it had the trucks remodeled or renewed by the No. 3 trucks and paper wheels.

Q. Was there ever any other remodeling done to that car?

A. No; I think not. No.

Q. You have as substituted for our car No. 59 car 189, have you not?

A. Yes, sir.

Q. I find the history of car 59 to be this: "It was built in 1865, run on the New York and Washington lines until September, 1868, when it was run on the P. & E., or Pennsylvania railroad. Was burned in Erie yard 1870. Replaced by car 189."

A. In May, 1870.

Q. And car 189 has this history: "This car was built by the Philadelphia and Erie railroad. Delivered May 23, 1871.
649 Assigned to the Philadelphia and Erie railroad. An open Pullman car named 'Erie.' Built at Erie to replace car No. 59, burned in Erie yard in 1870. Commenced service between Erie, Harrisburgh and Oil City. Shopped at Renovo from November 16, 1871, varnish, etc. Again at Renovo from June 3 to July 26, 1872, painting and general repairs. Again at Renovo from September 23 to October 19, to have state-room changed and car reupholstered. Shopped at Philadelphia from May 7 to 16, varnish inside and out. Renovo from August 6 to September 30, 1873—varnish, replating, etc. At Philadelphia from March 11 to 21, 1874, varnish, etc. It continued running between Harrisburg, Erie and Oil City until June, 1872, when the line was extended to New York, where it ran until October, 1873, since when it has run between Philadelphia and Erie. Transferred to mileage basis November 5, 1881. Plan changed from 27 to 23 b, April, 1879." Was there ever any other remodeling done than that?

A. None, except the change of trucks from the old style to No. 3.

Q. You have as substituted for our car 80, car 252, have you not?

A. Yes, sir; car 80 went out of service December. I will have to look at that. Car 252 came into service in September, 1872.

Q. Car 80 has this history: "This car built by Jackson & Sharp, July 29, 1868. Assigned to C., C. & I. C. railroad, and run between Chicago and Columbus. Shopped December 11, 1870, for
650 painting, etc. The railroad company decided to take this car and build a new one in place of it. Settled for October 16, 1875." What was paid for it?

A. There was nothing paid for it. They built a new car for it, I believe; my recollection is that they built a new car.

Q. The history of car 252 is this: "Built by the P., C. & St. Louis Railroad Company—C., C. & I. C. division. Delivered September 3, 1872. Assigned to P., C. & St. Louis—C., C. & I. C. division. Commenced service on the Pittsburgh and Cincinnati lines. Shopped Columbus from October 21 to October 31, 1872, for steel axles. Remodeled to plan 26¾ January 26, 1878." About what would be the cost of that remodeling?

A. From what plan?

Q. From plan 26 to 264?

A. I think that was costing us $700.

Q. Was there ever any other remodeling than that?

A. Nothing excepting the change of trucks from the old railroad company's standard to No. 3 with the paper wheels and the remodeling of the car to Y.

Q. At about what cost would the change of trucks and that remodeling to Y be?

A. The change of trucks would make a difference, giving credit for the old ones, of $1,400.

Q. That would be trucks and wheels both, of course?

A. Yes, sir. And the remodeling to the other plan would make a difference of $500 additional cost.

651 Q. Does that car continue to run on the Central division, or has it been condemned?

A. Oh no, it has not been condemned. It is a pretty lively corpse yet. It is still running on the Central division.

Q. What do you think that car 252 is worth now?

A. That is one of those good frame cars, and you have the foundation to build on it. That car 252 is worth $10,000.

Q. And what do you think it would be worth if brand new?

A. If it was brand new, we can build the same class of car for $12,000.

Q. Look at your record and see how often general repairs have been done on that car since 1872?

A. It seems that car did not receive what are termed general repairs until September, 1881. That is, new paint.

Q. And after that did it receive any general repairs?

A. Then general repairs in 1884, in January.

Q. And since then, down to the present time, including 1887?

A. That is the last time it received general repairs. That time it received everything, in 1884.

Q. At what cost would you say in 1884, for what was done then, $2,000?

A. In 1884, at Pullman?

Q. Yes.

A. No; that cost nearer $9,000.

Q. What would be done to it then?

652 A. Well, that got mostly everything, and that means nearly a new car in every particular except maybe a question of some bulkheads. It gets new bunks and new change of finish inside. It gets new ceiling, new panels and posts and platforms. As this record shows, it got a clean list right through, mostly the same as a new car.

Q. You have substituted for our car 66 your car 253, have you not?

A. Yes, sir.

Q. Car 66 went out when, and 253 went in when?

A. Car 66 went out in July, 1871, and 253 went in in August, 1872.

Q. The history of 66 is as follows: "Delivered January 24, 1866. Assigned to Pittsburgh, Columbus and Cincinnati railroad. It stood on side track at Pittsburgh until January, 1871, when it was condemned, and settled for October 16, 1875." What was received for that, $7,000?

A. I don't know.

Q. The history of car 253 is this: "Built by the Pittsburgh, Chicago and St. Louis L. M. division. Delivered Cincinnati August 30, 1872, and assigned to P., C. & St. Louis L. M. division. S. D. R. car, named 'Urbana.' Commenced service in the Pittsburgh and St. Louis line, where she run until November, 1872, when she commenced running in a through line between New York and Louisville. Shopped at Columbus from January 11 to February 2, 1873, on account of accident near Loveland. Again, at Columbus, from September 26 to November 25, 1873, general repairs.
653 Again, from August 10 to October 17, 1874, varnish, replating silver and minor repairs. Remodeled to plan 26¼ May 18, 1878. Transferred to mileage basis October 12, 1881." That car is in what division now?

A. That is still in the Central division.

Q. Has it never been out of it?

A. No, sir.

Q. You have substituted for our car 5 car 261, have you not?

A. Yes, sir.

Q. Car 5 went out when, and 261 went in when?

A. Car 5 went out in March, 1871, and 261 went in in December, 1872.

Q. The history of car 5 is as follows: "Delivered in 1858. Remodeled at Allegheny shops and come out a silver palace car in April, 1866, and run on the Chicago and New York lines until March 21, 1871, when it was condemned at Allegheny and replaced by car 261 in September, 1872."

Car 261 has this history: "Built by H. & H. Company, Wilmington. Delivered October 1, 1872. Assigned to Pittsburgh, Fort Wayne and Chicago railroad. A. S. D. R. car named 'Tropic.' Commenced service in the Chicago and New York lines. Shopped at Allegheny from July 11th to August 14, 1873, varnish, etc. Allegheny from May 14 to July 19, 1874, varnish, upholstering, etc. Again at Allegheny March, 1875, and in accident on Pittsburgh, Fort Wayne and Chicago railroad February 27, 1879. Shopped until March, 1879, on account of damage. Transferred to mileage basis May 1, 1882." Is that car still in the Central division?

654 A. Yes, sir.

Q. Has it ever been remodeled in any way?

A. It has been remodeled inside to the latest plan of plan 26.

Q. At about what cost?

A. That cost of remodeling is about $900 a car. In addition to that, the trucks have been changed at a cost of $1,400.

Q. You have substituted for our car No. 6 car 262, have you not?

A. Yes, sir.

Q. No. 6 went out when, and car No. 262 went in when?

A. Car 6 went out March, 1871, and 262 went in December, 1872.

Q. The history of car 6 is as follows: "This car was built November 26, 1858, and ran on Pittsburgh, Fort Wayne and Chicago railroad. Remodeled at Allegheny shops, coming out in 1868, named 'Allegheny,' and running in the New York and Chicago lines. Condemned in October, 1870, and sent to Allegheny yards. Was replaced by car No. 262 in September, 1872 Stored at Pullman as per letter of 1885. Transferred to Chicago division 12–31–'86; see letter of T. H. W., 12–30–'86." What does that mean by "Transferred to Chicago division?" This old car?

Car 262 has this history: "Built by Harlan & Hollingsworth and assigned to Pittsburgh, Fort Wayne and Chicago railroad. Delivered October 1, 1872. A. S. D. R. car, named 'Transit.' Commenced service in New York and Chicago line. Shopped at Alle-
655 gheny from July 21 until September 21, 1873, varnish, etc. Remodeled to plan 26¼ A at Allegheny March, 1880. Transferred to mileage basis May 1, 1882." Is that car still running in the Central division?

A. It is.

Q. You have substituted for our car 51 car 264, have you not?

A. Yes, sir. Car 51 went out January, 1871, and car 264 went in November, 1872.

Q. The history of car 51 is as follows: "Built April, 1865, and run on the Pittsburgh, Fort Wayne and Chicago railroad. Was shopped for three months in the latter part of 1867, probably for remodeling. Named 'Crestline.' Was condemned in April, 1871, and replaced by the present car 264."

Car 264 has this history: "Built by Jackson & Sharp to replace car 51. Condemned at a valuation of $6,000." What does that mean? That you paid $6,000 for that?

A. I suppose in the settlement they would allow $6,000 for that, or deduct that amount off of the bill for the new car.

Q. "Delivered November 5, 1872. Assigned to Pittsburgh, Fort Wayne and Chicago railroad. A S. D. R. car named Englewood. Commenced service in the Chicago and New York line. Shopped, etc. Remodeled to plan 26¼ August, 1878. Transferred to mileage basis May 1, 1882." Is that still in the Central division?

A. Still in that division.

Q. Has it ever been remodeled?

656 A. Yes, it has been remodeled, with high-back seats and all the latest improvements since, with the annex to the drawing room and the No. 3 trucks.

Q. You have substituted for our car 11 car 266, have you not?

A. Yes, sir. Car 11 went out January, 1873, and car 266 came in June, 1873.

Q. The history of car 11 is this: "This car was built in 1862 and run on the Pittsburgh, Fort Wayne and Chicago railroad. Shopped February 2, 1869, at Allegheny for remodeling, and came out named Pilgrim, a ten-section silver palace car June 5, 1879, and run on the Pittsburgh, Fort Wayne and Chicago until 1881, when it was trans-

ferred to the Chicago division." The Chicago division was not the Central, was it?

A. No, sir; the Chicago division was not the Central.

Q. "Received back October 1, 1872, and was condemned at Fort Wayne January 20, 1873." What was received for that?

A. I have no means of knowing.

Q. The history of car 266 is this: "This car was built by Jackson & Sharp. Received at Chicago January 27, 1873. Assigned to the Pittsburgh, Fort Wayne and Chicago railroad. A S. D. R. car named Lima. Commenced service in the Chicago and New York line. Shopped, etc. Remodeled to plan 26¼ May, 1879." Has that car ever been remodeled?

A. That car was remodeled with the high-back seats and all the latest improvements.

Q. At about what cost?

657 A. The No. 3 trucks were put under that prior to that at a cost of $1,400, and this remodeling at an expense of $1,500.

Q. Is that car still in the Central division?

A. According to the records; yes, sir.

Q. What is your recollection of it?

A. My recollection is that it is.

Q. You have substituted for our car 12 car 267, have you not?

A. Yes, sir; car 12 went out January, 1873, and car 267 came in January, 1873.

Q. The history of car 12 is as follows: "It was delivered in 1862. Remodeled in 1869. Came out a ten-section silver palace car. Run on Pittsburgh, Fort Wayne and Chicago railroad until June 17, 1871, when it was transferred to the Chicago division. Received back October 1, 1872, and condemned at Fort Wayne January 20, 1873." Do you know what was received for that?

A. I have no means of knowing.

Q. The history of car 267 is as follows: "Built by the Jackson & Sharp Company. Delivered ——. Assigned to Pittsburgh, Fort Wayne and Chicago railroad. A S. D. R. car named Forrest. Commenced service in the ——. Transferred to mileage basis May 1, 1882." Was that ever remodeled?

A. Just the same as car 264.

Q. Did it ever go out of the Central division?

A. It has not.

Q. It is still in it?

A. To the best of my knowledge, yes, sir.

Q. For car No. 27 you have substituted car 268 on your list, have you not?

658 A. I cannot find that.

Q. The history of car 27 is as follows: "Built in 1860. Rebuilt in 1868. Run between Pittsburgh and Cincinnati until January 22, 1873, when it was condemned, dismantled and turned over to P. C. and St. Louis R. R. Company. Replaced by car 268."

The history of car 268 is this: "Built by Jackson & Sharp. Delivered December 21, 1872. Assigned to P. C. and St. L. railroad. A S. D. R. car. Commenced service February, 1873, in the New York

and Louisville line. Has always run on the P. C. and St. L. through and local line. Remodeled to plan 26¼ July, 1878." Was that ever remodeled or rebuilt otherwise?

A. Car 268. That is the Arcola.

Q. Yes.

A. That car has been remodeled just the same as the others. They have the high-back seats in now.

Q. Where is it? Has it always been run in the Central division?

A. Yes, sir.

Q. And still is?

A. Yes, sir; it is still here.

Q. For car 8 you have marked as substituted car 269, have you not?

A. Yes, sir. Car 8 out in February, 1873, and car 269 in in December, 1872.

Q. Car 8 has this history: "Built in 1859. Remodeled in April, 1869, and run between Pittsburgh and Cincinnati. Condemned at Pittsburgh February 1, 1873. Replaced by car 269."

659 The history of car 269 is this: "This car was built by Jackson & Sharp to replace 8. Assigned to P., C. and St. Louis railway. Commenced service December 21, 1872. Single drawing-room car. Ran on the P., C. & St. Louis railroad through and local lines until February 19, 1875, when it was totally destroyed by fire at Ming's Junction, P., C. and St. L. railway, and was replaced by a new car of the same name and number, which commenced service in October, 1875." Has that car always run on the Central division?

A. Yes, sir.

Q. Car 52 you have as replaced by car 289, have you not?

A. It ought to be, because they are both Fort Waynes. Car 52 out of service July, 1873, and car 289 in service July, 1873.

Q. Car 52 has this history: "Built in 1865 and run on Pittsburgh, Fort Wayne and Chicago railroad. Burned in 1868, and new car came out November, 1868, named Monongahela, built, I suppose, at Fort Wayne. Was shopped at Allegheny June 1 to 30, 1871, for varnish. Continued running on the Pittsburgh, Fort Wayne and Chicago line until July 10, 1873, when it was condemned and settled for July 19, 1873." What was received for that?

A. I have no means of knowing.

Q. The history of car No. 289 is as follows: "Built by Bonny, Smith & Co. Received from construction depot July 18, 1875. Assigned to Pittsburgh, Fort Wayne and Chicago railroad.

660 A S. D. R. car named Beverly. Commenced service in the New York and Chicago line. Shopped at Allegheny, etc. Remodeled to plan 37e March, 1879. Transferred to mileage basis May 1, 1882, remodeled to buffet car, plan 37u, at Detroit September 12, 1885." Is that running now in the Central division?

A. Yes, sir.

Q. Has it ever been run out of it?

A. Well, not for any service. That car has been always in the Central-division lines.

Q. You have substituted for our car 69 car 290, have you not?

A. Yes, sir. Car 69 went out in September, 1873, and car 290 came into service July, 1873.

Q. The history of car 69 is this: "Built by Pittsburgh, Fort Wayne and Chicago railroad at Fort Wayne. Delivered August 1, 1867. A silver palace car, named Fort Wayne, and run on the through line. This and 75 at Altoona, and 76 at West Philadelphia, were built and came into the service at the same time. There was some sphere of rivalry in the matter as to style, cost and quality of cars. It ran on the Pittsburgh, Fort Wayne and Chicago railroad until July 20, 1871, when it was condemned and settled for July 19, 1871." Do you know what price was gotten?

A. I have no means of knowing that.

Q. Car 290 has this history: "Built by Bonny, Smith & Co. Received from construction department July 18, 1873. Assigned to Pittsburgh, Fort Wayne and Chicago railroad. A S. D. R. car, named Milford. Commenced service in the Chicago and
661 New York line. Remodeled to plan 37e May 18, 1879. Transferred to mileage basis May 1, 1882. Remodeled to plan 37u, buffet, January 24, 1886." Is that in the Central division?

A. It is. Those u's are all buffet cars.

Q. For car 73 you have substituted car 291, have you not?

A. Yes, sir. Car 73 went out of service June, 1873, and car 291 came in service July, 1873.

Q. The history of car 73 is as follows: "Built in April, 1867, and assigned to Pittsburgh, Fort Wayne and Chicago railroad. Named Mansfield. Remodeled in 1870, coming out a ten-section silver palace car. Run on the Pittsburgh, Fort Wayne and Chicago railroad until June 30, 1873, when it was condemned."

The history of car 291 is this: "Built by Jackson & Sharp Company. Received from construction department June 30, 1873. Assigned to Pittsburgh, Fort Wayne and Chicago railroad. A S. D. R. car, named La Crosse. Commenced service on the Chicago and New York line. Remodeled to plan 37e March 18, 1878; Janney platform and D. B. 11-27-77. Transferred to mileage basis May 1, 1882. Remodeled to plan 37u, buffet, at Pullman, December 29, 1885." Is that in the Central division still?

A. Yes, sir.

Q. You have marked as substitute for car 74 car 292, have you not?

A. Yes, sir. Car 72 went out of service June, 1873, and 292 went in July, 1873.

Q. The history of car 74 is this: "Built in April, 1869.
662 Assigned to the Pittsburgh, Fort Wayne and Chicago railroad. Shopped for remodeling August 20, 1869, and came out a ten-section silver palace car. It ran on the Pittsburgh, Fort Wayne and Chicago lines until June 30, 1873, when it was condemned."

Car 292 has this history: "Built by Jackson & Sharp June 30,

1873. Assigned to Pittsburgh, Fort Wayne and Chicago railroad. Built to replace car 74, condemned June 30, 1873. A S. D. R. car. Commenced service July, 1873, on the Chicago line. Remodeled to plan 37¼. 1878. Transferred to mileage basis May 30, 1872." Has that always been in the Central division?

A. Yes, sir.

Q. You have marked as substituted for car 15 car 315, have you not?

A. Yes, sir. Car 15 was retired July 18, 1873, and car 315 commenced service October, 1874.

Q. The history of car 15 is as follows: "Built in 1862, and run on the Northern Central. Shopped at York, 1870, for remodeling, and came out a ten-section silver palace car June 30, 1870, run on Baltimore and Elmira line. Continued running on Northern Central railway lines until December 5, 1872, when it was wrecked on the Pennsylvania railroad near Mifflin, when it was taken to Altoona and lay in yard until July, 1875, when it was condemned and settled for. Replaced by car 315." What was gotten for that car?

A. Car 315 was built to replace it.

Q. In whose handwriting are the words "Replaced by car 315," at the bottom of the other?

663 A. That is Mr. Simms' writing.

Q. Who is Mr. Simms? One of your clerks?

A. One of my clerks; yes, sir.

Q. The history of car 315 is as follows: "This car was built by P. R. R. at Altoona to replace car No. 15 condemned July, 1873. Received from construction department October 12, 1874. Assigned to Pennsylvania railroad. A S. D R. car. Commenced service in the New York and Washington line October 15, 1874. The interior was partly burned on B. & P. railroad yard, December 31, 1874. It lay at Washington until February 3, when it was shopped at Altoona for general repairs on account of fire. Remodeled to plan 37¼ February, 1878. Transferred to mileage basis January 7, 1881." Is that still in the Central-division service?

A. It is.

Q. Has it ever been out of it?

A. No. 315 has never been out of the Central division.

Q. You have marked car 90 as replaced by car Paoli, have you not?

A. Yes, sir. Car 90 was retired February, 1875, and Paoli came into service December, 1871.

Q. I have the history of the Paoli. We have already given it as having been built December 27, 1871, and received by transfer from the Southern division in December, 1879?

A. Yes, sir; we have gone over that.

Q. You have car Arabian substituted for car 48, have you not?

664 A. Yes, sir. Car 48 was retired March, 1871, and car Arabian commenced service February, 1871.

Q. The history of car Arabian speaks of it as remodeled to

plan 19½, at Detroit, 1878. Received by transfer from Boston division, February 1, 1879. Out Eastern railroad shops, with varnish.

A. The Arabian was built at the same time as the Iona and Saranac, and that lot of cars, at Harlan & Hollingsworth's, in 1870, coming out in 1870 and 1871, and ran but a trip or two here, when it was transferred to the Eastern division.

Q. And did not get back again until 1879?

A. And didn't get back again until 1879.

Q. Is that Arabian still running?

A. The Arabian is still running.

Q. In what division?

A. In the Central division. The Arabian was transferred to the Southern division November, 1884.

Q. When was the Iona transferred to the Southern division?

A. November, 1884, the same time.

Q. When was car 315 transferred to the Southern division?

A. It has not been transferred to the Southern division.

Q. You have marked as substituted for our car 2 the Bolivia, have you not?

A. Yes, sir. Car 2 went out in November, 1872, and the Bolivia went in in August, 1872.

Q. The history of car 2 is this: "Delivered in the fall of 1866 and remodeled into silver palace car in 1869, and run in the New
665 York and Cincinnati lines. Received May 5, 1872, and run on the Pennsylvania railroad lines until November 13, 1872, when it was condemned." Do you know what was received for that?

A. That came in in that settlement, the $7,000.

Q. I neglected to ask you what you received for car 48 and for car 90.

A. Car 90 was one of that settlement.

Q. For $7,000?

A. Yes, sir.

Q. And car 48?

A. The same.

Q. The history of the Bolivia is as follows: "Commenced service with the Pullman Palace Car Company August 21, 1872, when it was rebuilt by Detroit car manufacturing works from an old Hannibal and St. Jo. Received from Southern division November 13, 1879. Shopped last at W. & A. R. R., Atlanta. Out November 14, 1878." Did that get out of the Southern division until 1879?

A. The Bolivia is still in the Central division.

Q. Did it get into the Central division before 1879? Was it not before that in the Southern division? The first record of it here is, "Received from the Southern division, November 13, 1879?"

A. That is right.

Q. Then it did not come in until then?

A. No, sir. There is no record of its being transferred on these books.

Q. You have marked as substituted for car 67 the Etna, have you not?

A. Yes, sir. Car 67 out November, 1872, and Etna in March, 1871.

666 Q. The history of car 67 is this: "Built by P. C. and St. Louis railroad October 1, 1869. A silver palace car. Commenced service in New York and Cincinnati line. Continued to run in the New York and Cincinnati line. Lay idle at Cincinnati during 1878 and 1879, and settled for by P. C. and St. Louis Railroad Company January 5, 1880." How much was gotten for that?

A. $5,000.

Q. I have the history of the Etna, as follows: "Commenced service 1872. Received from construction department first-class condition. Remodeled to plan 19½ March 8, 1878. Ran on Washington and Savannah line. Was that ever received into the Central division before 1878?

A. I think not.

Q. You have marked as substituted for car 115 the Richmond, have you not?

A. The Richmond; yes, sir. Car 115 out July, 1877.

Q. Car 115 has this history: "Delivered October 20, 1869. A silver palace car. Assigned to Pennsylvania railroad. Commenced service on their through line. Ran between St. Louis and Columbus during the month of June, 1871, when it again ran between New York and Cincinnati, and ran between New York and St. Louis and Louisville until June, 1872, when it commenced running between New York, Oil City and Erie, where it remained until October, 1873, with the exception of some few trips on a through line. Destroyed by fire in Pittsburgh at the great railroad riot, July 22, 1877, and settled for February 6, 1880." Tell us what was gotten for that?

667 A. $7,762.

Q. The Richmond has this history: "Received by transfer from St. Louis division, January 22, 1877, and transferred to St. Louis division, January 28, 1878." Is that in the Central division now?

A. It is not, to the best of my recollection.

Q. And it never had been in it until January 22, 1877, had it?

A. I expect not.

Q. You have marked the Peru as substituted for car 70, have you not?

A. Yes, sir.

Q. Car 70 went out when?

A. Car 70 went out September, 1873, and Peru came in May, 1872.

Q. The history of car 70 is this: "A silver palace car. Delivered June 1, 1867, and run in the through lines. Was on mileage basis to Pennsylvania railroad. It run on the Pennsylvania railroad lines until April, 1873, when it was cut up April 23, at West Philadelphia shops, and settled for September 7, 1873." What price was received for it?

A. That was the same settlement.

Q. $7,000?
A. $7,000.
Q. The history of the Peru is this: "It commenced service with the Pullman Palace Car Company, May 13, 1872. Built by Detroit Car Manufacturing Company, in 1868. Formerly named Cheyenne. Did service on Union Pacific railroad, until remodeled by
668 Hannibal & St. Jo railroad to car Peru, May 13, 1872. Transferred from Southern division December 20, 1878." Is that in the Central division now?
A. I can't tell whether that is in without looking at the records.
Q. It is not, is it?
A. According to that schedule, it is not in the Central division.
Q. And it did not get into the Central division until the transfer, December 20, 1878, from the Southern division, did it?
A. No, I think not. That record will tell you.
Q. Car 55 you have marked as having substituted for it car S. 8, have you not?
A. Yes, sir. I don't believe it is in the book. I think that would come in that other book of Sanderson cars.
Q. Where is that?
A. I really do not know.
Q. When do you have the one marked as going out and the other as coming in?
A. Car 55 went out in 1873 and car S. 8—I haven't any memoranda here to help me as to when that came in.
Q. What was the history of those S. cars?
A. I am not familiar enough with those S. cars to know.
Q. Did they come into the Central division new cars or old cars, or did they ever get into the Central division?
A. Not in my time. I never had charge of them.
Q. You never knew them to be in the Central division?
669 A. I never knew them; no, sir.
Q. Car 55 I have marked here as follows: "Delivered May, 1865, and assigned to the Bellefontaine railroad. It has been named Union. Last service February, 1876. See letter of E. H. G." And then in lead pencil: "Quit service, July, 1873."
A. That car 55 was running right in the line as a part of the quota of cars in connection with the Sanderson cars. The Pullman Company then afterwards bought the Sanderson cars out, and 55 was retired, and S. 8 took its place.
Q. But S. 8 had always been in it?
A. It was right in that line; yes, sir.
Q. And it was not in the Central division?
A. Oh, yes, it was in the Central division. But I wasn't division superintendent at that time, so I haven't any personal knowledge of that.
Q. What was paid for car 55?
A. I have no means of knowing. I know we didn't get much from those western roads for any cars.
Q. You have marked the Garden City as substituted for car 43, have you not?

A. Yes, sir. Car 43 was out in 1872. I do not know the month.

Q. Car 271 went in when?

A. October, 1872.

Q. The history of car 43 is this: "Built December 25, 1865, and assigned to Indiana and Cincinnati railroad. Remodeled, coming out April 1, 1868, named The Southside. May 27, 1870, for remodeling. It was repainted and has since been waiting." What was paid for that car?

670 A. $2,500, I think. For 43 and 44.

Q. The history of car 271 is as follows: "Built by the Detroit Car Company at Detroit. Received from construction department, October 25, 1872. Assigned to I. C. & L. railroad. Commenced service in the Cincinnati and Chicago line via Kankakee. A single drawing-room car. Transferred to Chicago division, July 1, 1873. Received from Boston division, July 17, 1876. Operated on Lehigh Valley lines on mileage basis. Remodeled to plan 26¼, May, 1878." Is that car Garden City still running in the Central division?

A. I have no means of telling that.

Q. Where is it?

A. The last I knew of the car, it was running in the Central division.

Q. When was it that you last heard of it?

A It was in 1886, when I was in charge of the operating department.

Q. It had been in and out of the division ever so often, had it not?

A. We had run it everywhere on account of it being wild, no restrictions whatever as to the lines on which said cars should run.

Q. It had been built before it came into your line? It did not come into the Central division a new car, did it?

A. Yes, sir; both of them came in as new cars and were put on that Kankakee line.

Q. For car 44 you have marked as substituted the Queen City?

A. That is just the same. It is a mate of the other one.

671 Q. I have no history of 44 marked. 270 has the same history as the other.

A. Exactly.

Q. Excepting that it further appears that it was transferred to the Boston division, received by transfer from Boston division June 26, 1877, and remodeled to plan 26¼ September, 1877. Is that running in the Central division now?

A. It was the last I knew of it.

Q. What was gotten for 44? The same price as for 43?

A. The same price.

Q. For car 29 you have marked as substituted the Panama, have you not?

A. Yes, sir.

Q. The one in, when, and the other out, when?

A. Car 29 went out in February, 1879, and the Panama came in in March, 1871.

Q. Car 29 has this history: "It was built in 1865. It ran on the Philadelphia and Erie and Pennsylvania railroad until June, 1867, when it was remodeled at West Philadelphia and sent to the Bellefontaine railroad in November of that year, to which road it has since been assigned. It was loaned to the Louisville, Cincinnati and Lexington railroad in September, 1869, and was returned February, 1870. It had been idle until January, 1871, when it was condemned and taken to Wilmington. Dropped by orders." What was gotten for that car?

A. I have no reference.

Q. The Panama has no history. Can you give us a history for that?

672 A. I can't give you the date the car was built. The style of the car was an open Pullman.

Q. "Commenced service 1871. Built by Jackson & Sharp. Assigned wild." Where did it run?

A. That ran on the lines of the Southern division, out of Washington and to New Orleans.

Q. Did it ever get into the Central division?

A. It did.

Q. About when, first?

A. That came in about 1877 or 1878.

Q. And did it stay there all the time afterwards?

A. Up to the time that I left the operating department, it was still in the Central division.

Q. Is it still there, do you find it? You do not remember whether it is in now or not, do you?

A. No, I have no knowledge of it.

Q. For car 9 you have substituted Indiana, have you not?

A. Yes, sir.

Q. Car 9 went out when, and Indiana in when?

A. Car 9 went out March, 1870, and Indiana went in —— month, 1870.

Q. The Indiana has merely this history: "Built by Easton, Gilbert & Co., Troy. Assigned to C., C. & I. C. division. Commenced service June, 1867. Style of car, open Pullman." When did that get into the service of the Central division?

A. As soon as the Central division was known as such, in 1870. It came right in to take the place of that 9.

Q. Did it always stay in the Central division?

673 A. Until it was condemned.

Q. When was it condemned. I mean the Indiana?

A. My recollection is the Indiana was condemned in 1875.

Q. How is it that you have offered the Indiana as a substitute?

A. Because that was the car that took the place of No. 9 in the service.

Q. You say the Indiana was condemned in 1875. Then it had not been in existence for eleven years before you tendered it as a substitute?

A. The Indiana is still in existence yet.

Q. Has it been running in the Central division all the time?

A. It hasn't been running much anywhere.
Q. Where is it?
A. My recollection is that the car is out at Pullman, and is used ıly for emergency service.
Q. And has been there for how long, do you think?
A. That I can't tell; four or five years.
Q. It has not been in the Central-division service for four or five ;ars, then?
A. Well, it may only have been in for a trip or two.
Q. Do you remember whether it was even in for that?
A. I couldn't tell you from memory.
Q. Car 9 has this history: "Was delivered April 15, 1874. Ran n the New York and Western line until March, 1869, when it was run on other lines until July, 1869, when it was placed on 74 the Chicago and Columbus line. Lay idle from March until October, 1870, when it was overhauled in the shops of the olumbus, Chicago and Indiana Central division, P., C. & St. L. ıilroad, coming out November. Was condemned at Columbus iops March 26, 1872, and settled for October 16, 1875, at $7,000. tored at Pullman as per letter. Transferred to Chicago division." 'or car 79 you have marked as substituted the Planet, have you ot?
A. Yes, sir.
Q. Car 79 went out when, and Planet went in when?
A. Car 79 went out of service March, 1870, and Planet went in)ecember, 1871.
Q. Have you any history of the Planet anywheres?
A. The Planet is 256.
Q. The history of car 79 is as follows: "Built by Jackson & Sharp uly 28, 1868, and assigned to C., C. & I. C. railroad, and run be- ween Columbus and Chicago. Continued running on Chicago and olumbus line until April 1, 1873, when it ran as extra between hicago, Columbus and Cincinnati to August 1, 1873, when it lay t Columbus to March, 1874, when it was condemned and settled or October 16, 1875, for $7,000."
The history of car 256 is this: "This car ran under the number f 317, and named Planet, until July 1, 1872, when the number was hanged to 256. Built by the P., C. & St. L. railroad, C., C. & I. C. division. Delivered December 13, 1871. Assigned to P., C. 75 & St. L., C., C. & I. C. division. An open Pullman, named Planet. Commenced service in the Chicago and Columbus ine."
A. Those two cars 256 and 257, took their place actually in the ine, without any question of 9 and 79.
Q. "At Columbus, November 20, 1873, varnish, etc., up to which ime it had run between Chicago and Columbus. Transferred to hicago and Cincinnati district February 15, 1874, when it entered he Cincinnati and Pittsburgh line, where it ran during the month f February, and from March 1, 1874, in the Cincinnati and Chicago ine, via Richmond." Where is that car now?
A. The Planet is out at Pullman.

Q. How long has it been out of the Central division?

A. I should say it had been out of the Central division for three years.

Q. It is practically worthless, is it not?

A. It has been out of the Central division since the fall of 1884.

Q. It is practically worthless?

A. The car is only worth what you can get for it as an excursion or circus car, and not worth anything as a sleeping car.

Q. For the purposes you name, it is worth how much, do you suppose?

A. It should be worth about $3,600, for the reason that it has got a set of trucks under it that are worth $1,700 of that. The trucks under all of those cars are just as good. They are all new and with paper wheels.

676 Q. For car 16 you have marked as substituted the Belrose, have you not?

A. Yes, sir; car 16 was out of service August, 1874, and the Belrose went in July, 1873.

Q. The history of car 16 is as follows: "Built by Bolton. Delivered 1862. Run on the Northern Central railroad April 28, 1870. Came out of shops as a ten-section silver palace car, running on the Baltimore and Elmira line, and continued in the Northern Central Railroad lines until November 7, 1873. It lay at Altoona until August 17, 1874, when it was condemned and settled for" What was got for it?

A. $7,000.

Q. The history of the Belrose is as follows: "Originally an ordinary sleeper belonging to the old Southern Transportation Company, No. 6. Remodeled and placed in service of Pullman Palace Car Company, July 7, 1873. Stored at Pullman May 22, 1884. Transferred to Chicago division December 31, 1886." When did that go first into the Central Transportation service? "Assigned to W. & W. railway." What is "W. & W."?

A. Wilmington & Weldon.

Q. That was the railway on which it ran, was it not?

A. That was the railway on which it ran, and to the best of my recollection now, that car took the run of No. 15. How long it kept in that service I am unable to state.

Q. How much is that car worth now?

677 A. I don't recollect what class of trucks are under it. With the trucks that were under it when it was running, the car would not be worth over $1,000.

Q. When did it cease running in the Central Transportation Company's line, or Central division?

A. I think it was about 1877 or 1878.

Q. That it ceased to run in it?

A. Yes, sir.

Q. Where has it been since then?

A. The Belrose was transferred from the Central division, May 22, 1884, to Pullman, and transferred to the Chicago division, December 31, 1886.

Q. The same is the case with the Bellevue, is it not?

A. The same.

Q. I see you have marked as substituted for car 32, the car Bellevue, have you not?

A. I have.

Q. You have marked on your list car 32, as going out when, and Bellevue coming in when?

A. Car 32 as going out January, 1872, and the Bellevue coming in August, 1873.

Q. The history of car 32 is as follows: "Built September, 1868. Running on the Northern Central railroad. Shopped at York for remodeling July 27, 1870, to be a silver palace, in the style of 15 and 16. Came out remodeled into an open Pullman car, January 9, 1871. Shopped at York from June 15 to 27, 1871, for air brake. Again, from July 1 to 18, 1871, for varnish, etc. Was totally destroyed by fire near Lock Haven, P. & E. railroad, January 29, 1872." What was gotten for that?

678 A. I am unable to answer that.

Q. The history of the Bellevue is this: "Originally an ordinary sleeper, belonging to the Southern Transportation Company, No. 5. Remodeled and placed in service of Pullman Palace Car Company, August 25, 1873. Stored at Pullman August 18, 1884. Transferred to Chicago division, December 31, 1886. Originally assigned to W. & W. railroad." That is the same history as that of the Belrose, is it not?

A. The same.

Q. Could you tell me what repairs were done to the Belrose during the whole time it was in service?

A. These records will not give a history of the repairs to either the Bellevue or the Belrose, for the simple reason that those cars were handled by another division superintendent.

Q. Why by him?

A. Because it was another division.

Q. They were not run in the Central division?

A. They were not in the Central division, no.

Q. They were in the Central division since 1873, were they not; the W. and W. railroad?

A. No, sir.

Q. That was not in the Central division at all?

A. That was not in the Central division until quite a long time after that. I should say it was put in the Central division in 1875.

Q. It has never been in the Central Transportation Company's part of the Central division?

A. The Wilmington and Weldon was not, no; that was southern.

679 Q. Now, you have marked as substituted for car 99 the Caspian, have you not?

A. Yes, sir. Car 99 went out of service January, 1871, and the Caspian came in, in May, 1870.

Q. The history of car 99 is as follows: "Built for the Southern Transportation Company as car 13, probably in 1866." Now, if car

13 was built in 1866, cars 5 and 6, the Belrose and the Bellevue, must have been built before, were they not?

A. Not necessarily so.

Q. About the same time would you not say being the lower numbers?

A. Not necessarily, because 5 and 6 were built for another company. The original Central Transportation cars were all later.

Q. This is the Southern Transportation? The Central Transportation got car 9 from the Southern Transportation. Now, the Southern Transportation number was 13, and the cars Belrose and Bellevue were 5 and 6 of the Southern Transportation?

A. If you had as much experience in keeping the records of the Central Transportation Company as I had at that time, you wouldn't wonder at the mix of numbers. They were just as apt to number a car 99 as they were 1.

Q. What was probably the date? No. 13 of the Southern Transportation Company being built in 1866, when were the Belrose and Bellevue, which were 5 and 6, probably built?

A. I can't tell you from memory; I don't know.

Q. But likely about 1866, were they not?

By Mr. DICKSON:

Q. Can you safely draw any inference whatever from the number?

680 A. I cannot.

By Mr. JOHNSON:

Q. Within a year you could, could you not?

A. I wouldn't say that you could draw any inference from the number.

Q. "For the Southern Transportation Company as car 13, probably built in 1866. Run in various places, and bought by Central Transportation Company October 1, 1869. Cut up in West Philadelphia yard May 26, 1870. Value of car credited to Pullman Palace Car Company on account in settlement made December, 1870, at Altoona." That was one of those cars?

A. That was one of the $7,000 cars.

Q. The history of the Caspian is this: "This car was built by Detroit Car and Manufacturing Company. Delivered May, 1870. A S. D. room car, plan 26. Received from Chicago division May, 1876, and commenced service between Chicago, Grafton and Baltimore, B. & O. railroad, where it has since remained. January, 15, 1877, it was transferred to the Chicago division. Received from the construction department, Detroit, October 14, 1878, and run on mileage basis. Remodeled to plan 26¼." Now it was received from the Chicago division May, 1876. Then it did not get into the Central division until that time?

A. That was in the Central division, but from my memory I would hardly like to qualify the record there as far as that car running over the Baltimore and Ohio railroad is concerned.

Q. Was the Chicago division the Central division?

681 A. It was not.

Q. When it says: "Received from Chicago division May, 1876," it did not get into the Central division until May, 1876, did it?

A. It did not.

Q. Where is that car now? Is it running?

A. The last knowledge I have of it is in July, 1885. It was then running in the Central division.

Q. When did it get into the Central division? When it was remodeled in 1878?

A. When it was transferred from the Chicago division in 1876.

Q. The last you knew it was running?

A. Yes, sir.

Q. For car 118 you have marked the Corsican as substituted, have you not?

A. Yes, sir. Car 118 was retired January, 1871, and the Corsican commenced May, 1872.

Q. The history of car 118 is as follows: "Built for Southern Transportation Company as car 11. Delivered July 7, 1866. Bought October 1, 1869, by the C. T. Company and put on the Pennsylvania railroad. Cut up in West Philadelphia yards June 22, 1870. Value of car credited Pullman Palace Car Company on account in settlement made in December, 1870, at Altoona." That was $7,000, was it not?

A. I suppose it was the same.

Q. The history of car 382 is as follows: "This car was built by the Detroit Car and Manufacturing Company. Delivered May, 1872. A single drawing-room car, plan No. 26. Was received
682 from Chicago division, May, 1876, and commenced service between Chicago, Grafton and Baltimore, where it has since remained until January 15, 1877, when it was transferred to the Chicago division. Received from construction department, Detroit, October 14, 1878, and ran on mileage basis. Remodeled to plan 26½." Then that had the same history, as to getting into the service of the Central division, as the last car, the Caspian, had?

A. It came into the service the same time; the Centennial year.

Q. When last did you know of that running?

A. It was running in July, 1885.

Q. That is the last you knew of it?

A. Yes, sir.

Q. What became of it then?

A. I haven't any knowledge.

Q. Will your records show when it went out of the Central division? Please look.

A. I have no means of telling just where that car is.

Q. For car 81 you have marked as substituted the Chatauqua, have you not?

A. Yes, sir.

Q. Car 81 went out when?

A. December, 1876. Chatauqua came in May, 1876.

Q. The history of car 81 is this: "It was built by P., W. & B. Company, September 23, 1858. Silver palace car. Assigned to New

York and Washington lines. It lay idle from August 7, 1871, to September 1, at Washington, and then run in the New York
683 and Lynchburg line until November 20, when it was shopped at Wilmington, December 21, 1871, for painting, when it again ran between New York, Washington and Lynchburg. Was remodeled at Wilmington August 2, 1872. Out March 1, 1873. Remodeled into an open Pullman car and run in the New York and Washington lines. The interior was partly burned out at Charles Street depot, Baltimore, May 3, 1874. Shopped at Wilmington, J. & S., May 9, 1874, to March 6, 1875. General repairs. It lay at Philadelphia until March 21, when it commenced service on mileage basis on Lehigh Valley railroad, where it remained until April 22, 1875, when it again lay at Philadelphia until June 19, 1875, when it again commenced service on the Lehigh Valley railroad as before. Transferred to St. Louis division April 11, 1876. Last service December 18, 1876." What was gotten for that car, do you know?

A. I have no means of knowing.

Q. The history of the Chautauqua is as follows: "This car was built by the D. Car and Manufacturing Company. Delivered August, 1869. An open palace car, plan 17½. Received from Chicago division May, 1876, and has since run over the Pennsylvania, Pittsburgh, Fort Wayne and Chicago, P., C. & St. Louis, L. M., B. & O., M. C. and O. & M. Operated on mileage basis. Remodeled to plan 17¾, August 17, 1878." That has been in all the divisions, in and out, has it not?

A. That has been everywheres.

Q. When did it get out of the Central division?

A. I don't know as it is out yet. The last recollection that I have of it was as late as July, 1886.

684 Q. Where was it then running—in regular service?

A. It was running anywhere, either between here and Williamsport, but it had no regular assigned line.

Q. For car 60 you have marked as substituted car Monticello, have you not?

A. Yes, sir; car 60 went out March, 1871, and Monticello came in August, 1871.

Q. Car 60 has this history: "Delivered June 4, 1865, and run on the New York and Washington line until March 19, 1869, when it was transferred to the Philadelphia and Erie and Pennsylvania railroad. It was an eleven-section car." What was obtained for that?

A. $7,000, to the best of my knowledge.

Q. Have you the date when it was obtained?

A. I have not.

Q. The history of the Monticello is as follows: "This car was built by the H. & H. Company. Delivered August, 1871. An O. P. car, plan 27. Received from Chicago division May, 1876, and commenced service over P., F. W. & C. and Pennsylvania Railroad lines, on mileage basis, where it remained until December, 1876, when it was transferred to Chicago division. Received back by transfer from Chicago division December 11, 1880, and operated in

Cincinnati and Atlanta line." Is the Cincinnati and Atlanta line in the Central division?

A. It is.

Q. I see it says: "Received from Chicago division, May, 1876." Then it did not get into the Central division until May, 1876, did it?

685 A. It did not.

Q. Do you know where that car is now?

A. I have no means of knowing where it is.

Q. When last did you see it in the Central division?

A. In 1885.

Q For car 104 you have marked as substituted the Chili, have you not?

A. Yes, sir.

Q. The history of car 104 is this: "Was built by the Little Miami railroad, at Columbus, Ohio. Delivered October 18, 1869. A silver palace car. Assigned to P., C. & St. L. railroad. Commenced service on the New York and Cincinnati line. It lay at Cincinnati from June 1 to December, 1874, when it was condemned, and it is now being used by the P., C. & St. L. Company as a coach. Settled for October 16, 1875, at $7,000."

The history of the Chili is as follows: "Built by Detroit car and manufacturing works. Rebuilt by Hamilton & St. Jo railroad May, 1872. Commenced service with Pullman Palace Car Company May, 1872. Formerly called Ogden, built at Detroit car and manufacturing works in 1869. In service on Union Pacific railroad until remodeled to car Chili by Hannibal and St. Jo railroad, at Hannibal, May 24, 1872. Transferred from Southern division December 28, 1878." Then that car did not come into the Central division ever, until December, 1878, did it?

A. My recollection is that it came into the division in 1876.

Q. It says here, "Transferred from Southern division, December 28, 1878."

686 A. I received that car in 1876.

Q. It was then a car which had been built in 1869 and remodeled in 1872, was it not?

A. Evidently.

Q. Can you give me the history of the repairs of that car?

A. I can only give it from the time it came into the division.

Q. Give me that.

A. My recollection is that I operated that car in 1876. It might not have been transferred. Yes, the first record I have is, "Received by transfer from the Southern division, December, 1878." It came out from Detroit shop in January, 1879, with everything, completely renovated.

Q. At a cost of about what?

A. Well, at not less than $6,000.

Q. Take the history up from that time.

A. Next I find it in Manchester shop in August, 1879. It was painted again. As it did not get, from this record, a great deal of

general repairs outside of painting, I would say it would be not to exceed $1,500.

Q. In August, 1879?

A. Yes, sir. It was again shopped at Harlan & Hollingsworth's in November of the same year. There were new platforms and minor repairs. That expense was $7,561. Next in Elmira, December, 1880. It seems that it got everything there. I haven't got my figures down to that.

Q. In your testimony-in-chief you gave an estimate of the value of the cars running upon the Pennsylvania railroad, the
687 Cincinnati, Hamilton and Dayton railroad, the Cincinnati, Indianapolis, St. Louis and Chicago, and Louisville, Cincinnati and Lexington railroad, I think, at about $14,000, did you not, the average value of the cars?

A. I did.

Q. About what do you think is the average age of those cars which you thus valued?

A. I should say the average age of the cars would be nearly eleven years.

Q. In giving the value that you did to the new Pullman cars constructed in the best style, as they are now constructed, I think, $13,500, what profit did you calculate as added to the actual cost to make up that amount?

A. My recollection is that I did not give that as being the cost of the present standard of Pullman cars.

Q. I may be mistaken. Then I will ask you what is the present cost of the standard Pullman cars?

A. The last standard of Pullman cars cost a little over $17,000.

Q. Those are the vestibule cars?

A. Yes, sir.

Q. And then the next grade of cars, the ordinary cars, without the vestibules, cost what?

A. The next grade of cars without the vestibules cost $15,500.

Q. What profit is added to the shop cost to make that?

A. There has been none to that. That is actual shop cost.

688 Q. The Central division, as it is known on your books, includes what railroads other than those which you credit to the Central Transportation Company?

A. I can tell you what it comprises. I have not got that list before me. It comprises, commencing south, the Savannah, Florida and Western; the Northeastern, Charleston and Savannah; the Wilmington, Columbia and Augusta; the Wilmington and Weldon; the Richmond and Petersburg; the Richmond, Fredericksburg and Potomac; the Baltimore and Potomac; the Richmond and Danville, and its leased lines; the Western North Carolina; the Florida Railway and Navigation Company; the South Florida; the Florida Southern; the Norfolk and Western; the East Tennesse, Virginia and Georgia; the Shenandoah Valley; the Philadelphia, Wilmington and Baltimore, or Pennsylvania railroad, and its leased lines, including the Vandalia and Allegheny Valley; and the Lehigh

Valley and the Cincinnati, Hamilton and Dayton. Those comprise the Central division.

Q. The new Pennsylvania contract of 1885 included the Pennsylvania railroad and its leased lines, the Vandalia, and what others of the list that you have named?

A. It includes the Vandalia, the Pittsburg, Fort Wayne and Chicago, and its leased lines.

Q. None of which have been particularized in that list that you gave me?

A. No. The Pittsburg, Cincinnati and St. Louis, the Chicago, St. Louis and Pittsburg, the Northern Central, the Philadelphia and Erie, United railroads, Baltimore and Potomac, and the Philadelphia, Wilmington and Baltimore.

689 Q. Do you remember about how many cars were run in 1886 on the whole Central division?

A. I haven't got that in mind, but I would say approximately 280 or 290 cars.

Q. And about how many of them go to lines outside of those included in the Pennsylvania contract?

A. About ninety cars.

Q. Do you remember what the total capital and what the gross funded indebtedness of the Pullman Company is?

A. I cannot give you that.

Q. Do you remember what dividends the Pullman has been paying?

A. I have not been receiving any, but my understanding is eight per cent.

Q. I thought you might know what dividends have been declared in the last few years.

A. Eight per cent.

Q. What is the average run of a standard car, that is, the number of miles which constitute a fair average run of a standard car per annum on the Central division, say?

A. 125,000 miles.

Q. That is an average run is it not?

A. That would be about the average run.

Q. Do they run pretty near the same on the different divisions, the way you have divided them up, or is there a difference in favor of one?

A. There is a difference in favor of one division over another. The Central division probably makes more mileage per car out of each car than any other division.

690 Q. What trunk line east of Chicago is open to the Pullman cars to reach New York or Philadelphia or Baltimore, or Washington?

A. The Pennsylvania.

Q. All others are closed against that company, are they not?

A. To New York, Philadelphia, Baltimore and Washington. But the New York, Lake Erie and Western and its interests is also one of the Pullman's lines.

Q. Does the Pullman operate that under a lease?

A. Under a lease.

Q. That is not a very favorite road by which to reach New York, is it?

A. It is a very good road.

Q. Is it not longer running time from Chicago than by the Pennsylvania?

A. Yes, it is longer.

Q. And it does not reach Washington or Baltimore, or Philadelphia, does it, excepting by way of New York south over the Pennsylvania lines?

A. It reaches Philadelphia.

Q. By what road?

A. Via the Lehigh Valley and North Penn.

Q. That would be a very roundabout way of getting to Philadelphia, would it not?

A. Oh, no; it is a very fair route.

Q. Where does the Lehigh Valley intersect with the New York, Lake Erie and Western?

A. At Buffalo.

By Mr. DICKSON:

Q. Have you mentioned the Delaware, Lackawanna and Western?

691 A. No. There is also the Delaware, Lackawanna and Western, which is an excellent route.

By Mr. JOHNSON:

Q. If the lease with the Pennsylvania railroad had not been renewed, it would have been a very considerable disadvantage to the Pullman system, would it not?

A. It would have been a disadvantage.

Q. And how about the number of cars? It *it* would have rendered useless a very large number of cars, would it not?

A. Yes, it would, but only temporarily. The demand in the West is so extensive, so great, that the cars that would have been relieved on account of the Pennsylvania system would have been used and put to good use.

Q. It would have taken some years, though, would it not?

A. No, sir; it wouldn't have taken long, as we are absolutely unable to build cars fast enough to meet the requirements of the Western trade. In fact, we are at present building about 160 standard Pullman cars for lines west of Chicago. It is over 160—sixteen a month.

Q. If the thirty-seven cars stored at Altoona or elsewhere were repaired to the extent you have stated, what would be the worth of the cars apiece?

A. For use as sleeping cars, practically nothing.

Q. For any purpose, and what, and how much?

A. They might be turned into coaches, and if that was done it would require an expense so that in reality they wouldn't be worth over $3,000 apiece.

Q. After the expenditures were made upon them?

692 A. Yes, sir.

Q. They are practically worthless?

A. They are; practically worthless.

Q. The bulk of them have been out of any active service for ten or eleven years, have they not?

A. Yes, sir.

Q. And other cars substituted in their place?

A. Yes, sir.

Q. Do you know why they were not disposed of to the railroad company which was under obligation to repair them before the mileage contract went into effect?

A. I think the arrangement was made for the settlement of these old cars before they had taken the question of changing from the maintenance to the mileage basis into consideration.

Q. Then they were all settled for, anterior to that mileage contract?

A. Yes, sir.

Q. Do you know any book of the books kept by the Pullman Company that shows the history, and, if substitution, the substitution of any of the sixty-three cars tendered for those of our sixty-three that are no longer in existence, other than the books which you have produced here?

A. I don't think there is.

Q. Any one who wanted to get information upon that subject would have to turn to that as being the only record?

A. They would have to turn to that. That is the only record.

Q. The actual bargains in all cases were made by officers of the Pullman Company superior to the district superintendent, to yourself?

693 A. They were.

Q. From the time you were first requested to prepare the information afterwards embodied in Exhibit F until the completion thereof, how long a time was consumed?

A. I really am unable to say how long after I had completed my part of that statement. At the time I was called on to make up that list of substitutes I was unable to leave my house in Brooklyn on account of sickness. I furnished the data, giving the cars that had been received, and in the order of their receipt, that actually performed the service in place of the old ones, furnishing that information to our attorneys in New York through one of my clerks.

Q. Who in all, so far as you know, contributed matter or corrections or suggestions to the getting up of Exhibit F beside yourself? You have named yourself and Mr. Smedley.

A. I believe that Judge Lochrane and Mr. Burry and Auditor Davie are the only ones that contributed to that.

Q. What was the general nature of the contribution by Judge Lochrane and Mr. Burry?

A. I am unable to state, because I wasn't present.

Q. Have I asked you how many cars in all were running in the

whole Central division before the new contract of January, 1885? I mean sleepers, drawing-room, parlor and all.

A. I think you did. There were about 290 cars.

Q. I think you told me this afternoon there were about that same number running still?

694 A. About that same number running still; yes, sir.

Q. Do you recall whether, since that new contract, by reason of any increase of the general business, the gross receipts of the Central division have increased or not?

A. I cannot answer that, because I paid very little attention to anything else except my own particular department.

Q. What was your own particular department, as second vice-president?

A. Construction department.

Q. Was not your chief or superintendent of your division for some time a Mr. Torry?

A. Yes, sir.

Q. During what period?

A. From 1870 until 1875

Q. Did he go out of the Pullman service altogether then, or was he put into some other position?

A. He had the position then as chief of the transportation bureau of the Centennial.

Q. And then when the Centennial was over did he continue in the service?

A. He did not.

Q. In detail we have gone over a large number of the sixty-three original cars for which substitutes were said to have been made, and in many cases reached the figures for which they were settled. In almost all the instances was not that settlement paid as equivalent for repairs that the railroad companies ought to have made, and were not the cars still left in the possession of the Pullman Company? I am speaking now of the sixty-three.

695 A. To the best of my recollection, I think that was for full settlement, and that the railroad companies kept those cars. I have no recollection of any old hulks being turned over to get the iron from them.

Q. Have you a recollection either way about it, or is it a matter that was not under your immediate eye, and therefore one that you are not able to testify about, one way or the other?

A. I couldn't testify from personal knowledge prior to 1875.

By Mr. DICKSON:

Q. But after that?

A. After that, if there are any cars that were settled for, I would know, beyond any question.

By Mr. JOHNSON:

Q. Do you remember since 1875 whether any of the cars remained in the possession of the Pullman Company, besides the thirty-seven we have gone over and shown they were dead?

A. Those did. The others, absolutely no; they went into the possession of the railroad company. That $7,000, or whatever the amount was, was complete settlement for that car, and they took possession of it. The same way they did with 67 and 104, which were converted into coaches.

Q. So far as you remember, were new trucks or wheels put under any of the thirty-seven cars which were stored at Altoona and elsewhere?

A. Yes, sir; they all had new trucks put under them, six-wheeled trucks, in 1871.

Q. Those were not what you call the No. 3?

A. No, sir; they were trucks that were known then as the Pennsylvania standard.

696 Q. Just the wheels then Pennsylvania standard?

A. They were six-wheeled trucks. The most of those cars were received on four-wheeled trucks, and on account of the heating and trouble had in getting them over the lines, faster schedule, we were absolutely obliged to put under them a standard six-wheeled truck.

—. But there was no substitution after that of any No. 3 or No. 5?

A. Not with any of those cars; no, sir.

Q. Are there any cars now running on the Pennsylvania railroad, the Cincinnati, Hamilton and Dayton railroad, the Cincinnati, Indianapolis, St. Louis and Chicago railroad, or the Louisville, Cincinnati and Lexington railroad, whose numbers are under 300?

A. I am unable to state anything about where and what are the cars that are running on the lines, as I have not had anything to do with the operating department for eighteen months past.

Q. But the last time you had knowledge of them, were there on any of those roads, cars running, whose numbers were under 300?

A. There are.

Q. You could not, of course, tell me how many. About how many?

A. I couldn't tell.

Q. All your cars under 300 were built before 1871 was finished, were they not?

A. All under 300 were built prior to 1877.

Q. Was it not long prior to 1877?

A. No. We have 298 and 299 and 300 and 296. Some of
697 those are long after the Centennial year; but all cars, to the best of my recollection, up to 298, were built prior to 1875.

Q. Is it not a fact that for two years cars were put into the service by names, and not by numbers?

A. Well, that is as the notion took them. All other divisions of the company name their cars.

Q. Do you know whether your company keeps a depreciation account as a part of its deductions?

A. I couldn't answer that.

Q. Nor do you know the method of keeping upon your books the

value of your cars, when you take account of stock, do you; I mean the Pullman general books?

A. No; I couldn't answer that.

Q. If the average running per year of a car was 125,000 miles on the Central division, and the Pennsylvania railroad paid you three cents per mile run to keep the car in order, that would give you $3,750 per car per annum, would it not?

A. $3,750.

Q. Is it your testimony that it takes about $3,750 per annum to keep a car in repair, giving it a life of fifteen years?

A. I have testified that the average cost of maintenance is $2,500 per car per year.

Q. Then on a mileage of three cents a mile on an average run of 125,000 miles per year, there would have been $1,250 clean profit?

Mr. DICKSON: He has not said that the average mileage run was 125,000 miles. He has been speaking of the increased mileage run on account of faster schedule, &c.

698 By Mr. JOHNSON:

Q. Has there been an increase since 1878 in the average number of miles run per car?

A. Very much.

Q. What was average, do you think, in 1878, per annum?

A. I don't think we averaged quite 8,000 miles.

Q. Per month?

A. Per month. Whilst now there are a large number of our cars that will go 20,000 miles a month

Q. Then it ought te require a diminished number of cars to do the same service that was done before, ought it not?

A. It does require a less number of cars to do the same service.

Q. And that diminished service ought to be in proportion to the increased mileage which the car makes, ought it not?

A. I don't quite get your question.

Q. If the former average was 96,000 miles, and is now 125,000 miles, you ought to be able to get along with a less service to the extent that the car will run more miles per year, because the car is doing more service?

A. The car is doing more service, and consequently you are getting more service out of each car, therefore it requires a less number of cars; but, owing to increased trains, the number of cars have to be kept about the same.

Q. Because the business was increased?

A. Because the business has increased; yes, sir.

699 Q. Were there any cars on the mileage basis on the Pennsylvania railroad prior to the new contract, which were running at the average of 125,000 miles?

A. There were not.

Q. Those were all the old-style cars, were they?

A. They were old-style, and if there were any cars on the mileage basis prior to that time, it was simply a special arrangement, temporary.

Q. Were there any new cars which you put on the road, which were put under any new mileage basis before the new contract of 1885?

A. Yes, sir; we furnished new cars on the mileage basis in 1881, 1882, 1883 and 1884.

Q. Equal to the present standard, and capable of running 125,000 miles?

A. Yes, sir.

Q. What was the mileage basis?

A. That mileage basis was three cents a mile.

Q. Then you were really getting from the Pennsylvania railroad at the rate of three cents a mile on cars which were making an average run of 125,000 miles?

A. No, sir; they were not making that average at that time.

Q. Because they were incapable of it, or why?

A. Not because they were incapable of it, but because the trains didn't admit of it.

Q. The speed of the trains did not admit it?

A. The speed of the trains has been increased. Where we were taking one and a half and two days to Chicago, we are taking now twenty-four and twenty-five hours. Where three cars are required now to Chicago, we required four under that schedule.

700 Q. And you were getting the same price for your state-rooms then as now?

A. Yes, sir.

Q. There has been no diminution in the price?

A. No change in rates.

Q. That necessarily makes a very considerable additional profit, does it not, in the running of such trains?

A. You earned your $5 a little bit quicker.

Q. It is just half or two-thirds of the time; less than two-thirds, is it not?

A. Just about two-thirds of the time.

Q. Is this average of 125,000 miles obtained on any other than the trains of extraordinary speed, like the Chicago limited, or is it now the general average of all the trains?

A. All the trains are pretty fast, but that average will have to be set down to an average of the cars in through service over the Pennsylvania system, either to Chicago, Cincinnati or St. Louis.

Q. That hardly represents half of the total number of cars in the Central division?

A. Hardly.

Q. Those cars keep up the old average of 96,000 miles, do they?

A. Yes, sir; I should say their average wouldn't exceed 100,000 miles a year.

Q. I think you testified in the common-law trial that the new agreement with the Pennsylvania Railroad Company was not signed until certainly before the Fourth of July, and probably not until August, 1885. Do you recall now the fact of when the

701 actual execution of the contract with the Pennsylvania

Railroad Company was? The contract was not executed until you had finally agreed upon your schedule of cars, was it?

A. My recollection is that they were not waiting on that schedule of cars. That was furnished them some little time before that contract was signed, but I am unable to give any different version of the matter from what I did in the previous testimony.

Q. What is your present recollection about how long after our agreement, which we called the conditional agreement of the 27th of February, 1885, the contract between the Pennsylvania railroad and the Pullman Company was actually executed?

A. My former testimony will give that.

Q. Whatever you then stated was from knowledge within hand?

A. Knowledge I had.

Re-examined.

By Mr. DICKSON:

Q. Would it have been possible, in the usual and proper method of conducting your business, to always have had a new car waiting to take the place of an old one when it came to be condemned and discarded, or did you necessarily add the cars from time to time as your business seemed to want them?

(Objected to.)

A. It was not possible, and at the same time, knowing the condition of the cars that had been turned over with the lease, the orders were placed to build cars as rapidly as possible. I had under
702 my charge at that time in 1870, indirectly, cars building at Mt. Clair, at three shops in Wilmington, at Philadelphia and Altoona and Allegheny and Renovo and Erie, and even then we were not get-ing them fast enough to take the place of the old ones to prevent a considerable growl on the part of the railroad companies.

Q. Were those first cars then built for the purpose of replacing those 119 that were unsatisfactory?

A. They were.

Q. And then this substitution was made by taking the first cars which had come upon the road and which had been built for the purpose of replacing the 119, and giving them in lieu of those that had been condemned?

(Objected to.)

A. That is the way we always proceeded, and that is the way I made up my schedule in this instance.

Q. And it was upon that theory that you did undertake to make that schedule, when you did furnish it to counsel for the purpose of examination?

(Objected to.)

A. That was the way; on that theory.

Q. Taking the sixty-three cars which were thus tendered, were they or were they not serviceable and roadworthy at the time of tender?

A. They were entirely satisfactory to the railroad companies and to ourselves.

Q. How would they compare with the best 63 that you received in 1870?

703 A. Well, there is hardly any comparison, because there weren't any cars that we received from the Central Transportation Company, excepting those that were built in 1869, with the exception of number 36 on the Ohio and Mississippi, that were worth anything at all.

Q. Excepting those, if you had taken the others and kept them under a glass case down until the year 1885 or 1886, would they then have been worth anything, supposing they were in precisely the identical condition in which you have stated?

A. They would not.

Q. Would they have been permitted to run at all, according to the modern standard, in the year 1885 or 1886?

A. No, sir; not on any passenger train.

Q. On the other hand, the sixty-three cars which you did tender were all of them of the kind that would be acceptable?

A. They were.

Recross-examined.

By Mr. JOHNSON:

Q. Is it not a fact that very many of the 119 cars would not have been permitted to run by the railroad companies on the standard that prevailed in 1870?

A. It is.

Q. So that when that contract was entered into in 1870, it was thoroughly well understood that the bulk of those cars were obsolete and could not run for any length of time, was it not?

A. I can hardly answer that whether that was understood by the president of the Pullman Company or not, but certainly I myself and officers of the Central Transportation Company knew the condition of the cars full well.

704 Q. Anybody who knew the condition of the cars would have known that it was necessary, under the then standard which prevailed, to replace them by a different kind of car?

A. No question, yes.

Q. And the extent of the investigation of the then condition of the cars made by Mr. Pullman, you do not know?

A. I do not.

Q. In making up this substitution, did you receive any advice from counsel; and, if so, what was that advice, as to how things were to fit?

A. I think that to the best of my recollection I got a communication from Gen. Porter asking me to make up that list of substitutes.

Q. Was there no suggestion or advice by counsel as to the making up of it, how things were to fit?

A. There was some advice given me, but I insisted on making up

a list to the best of my judgment as to the cars, and the order in which they were received, that actually did perform service in the lines where these Central Transportation cars had been running, and that, you will see by that list, if you follow them through, with the mileage, the history of the cars, is what I have done.

Q. But did not the list also accord with the suggestion of counsel made?

A. The list was criticised considerably by some one, I don't recollect who now, that they thought I was putting in as substitutes a good many cars that were entirely too good.

Q. Could you have picked out worse ones?

705 A. Oh, yes. I couldn't pick out worse ones that had performed service in those lines.

Q. Confining yourself to cars which had served in the Central-division lines, you could not have done worse in the way of substitution, could you?

A. I don't see how I could have done any better.

Q. You could not have done worse, either, could you?

A. Yes, sir; I might have strained a point and got a few worse.

Q. Can you recall a car which you could have given us that would have been worse than S. 8, or Belrose, or Belleview?

A. Now, with regard to S. 8, there was a car that actually performed the service, taking the place of 79 or 78. It actually did it, and I can't see how I could change that and put in a car that had never run on that line. There was the substitute.

By Mr. DICKSON:

Q. It was a lineal successor at the time your car went off?

A. It was a lineal successor.

By Mr. JOHNSON:

Q. Although it came on about six years after it went off?

A. Not that.

Q. Not the Belrose or Bellevue?

A. The Bellevue and Belrose performed the service prior to the time that you were thinking of, but of course it was only temporary service until we could get other cars to come in the place of them, of 15 and 32.

Adjourned.

E. H. GOODMAN.

706 Testimony *de bene esse* taken before Henry W. Bishop, a commissioner of the circuit court of the United States, on the 29th day of November, A. D. 1887, pursuant to notice attached to testimony.

Present, Mr. Burry for complainant; Mr. Johnson for defendant.

BENJAMIN K. VERBRYCK, a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. Burry, and testified as follows:

Q. Please state your name, residence and occupation.

A. Benjamin Verbryck; residence, 256 51st street, Chicago; occupation, general manager of repair shops of the Chicago, Rock Island and Pacific railroad.

Q. How long have you held that position?

A. Between sixteen and seventeen years.

Q. How long have you been engaged in the work of building and repairing cars?

A. A little over forty years.

Q. Have you ever built or repaired any sleeping cars?

A. Yes, sir; both.

Q. Are you a member of the Master Car Builders' Association of the United States?

A. Yes, sir.

Q. In running a car, it is necessary, is it not, to put on it what are known as ordinary repairs, that is, repairs to bodies,
707 trucks, frames and so on, to insure their safety and keep them in running order?

A. Yes, sir.

Q. It is also necessary, is it not, to place them in the shops every three or four years, to give them a thorough overhauling or to put on them extraordinary repairs?

A. Usually four to five years.

Q. Are both these classes of repairs usually put upon sleeping cars?

A. Yes, sir.

Q. If both these classes of repairs are put upon cars, do they suffer any further deterioration from age?

A. Yes, sir; they will all wear out.

Q. You say they will wear out notwithstanding these repairs?

A. Yes, sir.

Q. Please state what, in your judgment, is the average age of sleeping cars, which have had put upon them both classes of the repairs I have enumerated, as they required them.

A. I should judge about fifteen years, thirteen to fifteen years.

Q. What has been done to them as a general thing?

A. Usually when they are worn out they destroy them. I have put one or two in some other service after that, ordinary branch use, but usually they are destroyed.

Q. And others built in their places?

A. Yes, sir.

Q. You say they wear out from old age, what are the indi-
708 cations of that age, or what are the weaknesses that develop on account of which they are thus destroyed, or scrapped?

A. They get shaky, and some parts of them rotten, and the timber decays, and they are not fit for service any more; we don't consider them safe.

Q. Will you please state, what in your opinion is the proper percentage on the value of the car to be set aside or allowed, from year to year, to equal this depreciation from age and wearing out that you have mentioned, or to provide a replacement or renewal fund with which to build the successors of the sleeping cars, as they are from time to time worn out and destroyed, please give your best judgment?

A. I will give my best judgment, I would not profess to say I would be exactly correct in it; that is something I have not figured on, but I would think nothing less than six per cent. a year.

Q. On the value of the cars?

A. Yes, sir.

Q. You have stated in your opinion, fifteen years is the average life of a sleeping car; please consider now the fact, that sleeping cars are usually made in a finer manner than other cars, that they have to be kept up to suit the public taste, and the requirements of the different railroads upon which they run, and that there is, so to speak, a certain fashion in them; state what, in your opinion, would be the average life of sleeping cars if they are to be condemned from time to time, as railroad companies may object to them, or as they may pass out of fashion?

(Objected to as leading and irrelevant; question withdrawn.)

709 Cross-examination by Mr. JOHNSON:

Q. In all matters of percentages in order to arrive at it with any confidence it is necessary to have some sort of statistics, is it not?

A. Yes, sir.

Q. Are there any statistics preserved of the lives of cars from which we could gather the percentage?

A. I do not exactly understand.

Q. Statistics of the lives of cars on different roads and different classes of cars so that you could get from them an estimate of the depreciation?

A. The life of a car I could tell from my books, that is, of the average life of cars from the time I have had charge of the road.

Q. Have you referred to those books?

A. No, sir.

Q. And in getting at your percentage did you do so without referring to those books?

A. Yes, sir.

Q. Necessarily the percentage is somewhat conjectural, is it not?

A. I stated, I believe, in my direct testimony it was from my best judgment, not from anything I looked up at all.

Q. Did you know whether it is the practice of railroad companies to put aside out of the earnings in any way a sinking fund for the purpose of meeting the depreciation of cars?

A. No, sir.

Q. Don't you know on the contrary that none of them have any such practice?

710 A. I do not. I have had nothing to do with the operating department, when they are destroyed I put another in the place of them or make them serviceable.

Q. To what extent have you built sleeping cars?

A. I have built quite a number on the Erie road, quite a number of them. I built eight on the Chicago, Rock Island and Pacific before Mr. Pullman had the road.

Q. Those you built on the Erie you built how long ago?

A. Previous to 1871.

Q. They were built lighter and less substantial and less durable in every way than the present style, is not that so?

A. I don't know, they were built pretty heavy at that time.

Q. What was the average weight of a standard sleeping car then?

A. About thirty tons.

Q. What is it now?

A. They build them longer; at the present time the average weight of a Pullman car, I suppose, is 70,000 pounds, the trucks are larger. I don't know the exact weight of them, but, I suppose, that is the average weight.

Q. And the eight cars you built on the Rock Island road were built how long ago?

A. Built two of them in 1871, and two of them in 1873, one of them in 1874, and the other three in 1879, these are the last I built.

Q. How long have you had Pullman coaches running on the Rock Island?

711 A. Since 1880, I think, it was the 1st of January, but I am not exactly certain of the date.

Q. Who keeps them in repair?

A. The Rock Island.

Q. Have you calculated how much it costs per car per annum to keep them in repair?

A. I do not know, I have it on my books. I have it on my books, but have never examined it.

Q. You could not give us approximately the amount?

A. I would not like to say, it would be really guessing if I did.

Q. Your best recollection?

A. I should suppose twelve to fifteen hundred dollars a year, that is, as far as the Rock Island is concerned; we don't keep up the inside; that is kept up by Mr. Pullman.

Q. There is such a thing as general repairs, what you call general repairs; what is the usual cost of them?

A. It depends a good deal on what kind of general repairs it is, sometimes they want a good deal more work than others. I don't know that I could give it without looking over my books.

Q. In getting at the cost do you include any profit on work?

A. No profit, only just the work itself, and a little percentage we put on for the use of machinery.

Q. That is, how much?

A. We generally put on about five per cent. for the use of machinery.

712 Q. What, in your judgment, would be the worth of a first-class Pullman car such as, new, would cost $14,000, after seven or eight years of use, and the proper repairs having been made during the whole of the seven or eight years?

A. There is a good deal of a difference of opinion about that, I should suppose it would be worth about eight or nine thousand dollars.

Q. What would be the value of a similar Pullman first-class sleeping car, fairly well kept up, altered and remodeled from time to time to keep it up to the fashion, after fourteen years' use?

A. I don't know that I could tell.

Q. It is, of course, merely an estimate that I want. Your judgment as an expert, I don't ask you as a fixed fact.

A. I would not know what the value of the interior kept up as Pullman keeps them up would be, I could not tell you what the value of the inside work is, because it would be worth but little.

Q. Well, with your knowledge of how those things can be kept up, if kept up in the best order, what would such a car, so kept up after such length of use, according to your best judgment be worth?

A. I would not want to give more than four or five thousand dollars for it if I wanted it bad.

Q. General repairs I think you said, you do on an average, from four to five years?

A. Usually, yes, sir.

Q. What are the other sort of repairs what you call minor repairs?

A. That is merely bringing them in to clean and varnish, some light repairs, tightening up.

Q. They come in for that, how often?

713 A. They should come in once a year.

Q. What is the general cost of such minor repairs as are required to be done every year?

A. You include trucks and all?

Q. Yes, sir, such things as have to be done every year.

A. They usually cost us from four to five hundred dollars each time a car comes in to be varnished up, cleaned, trucks overhauled and all that; it depends a little on the size of the car, but the ordinary Pullman car I mean; perhaps about $400. I could tell by the books, but could not tell right here.

Q. And these repairs done once every four or five years, I am not putting an extraordinary case, but the average class of repairs, done every four or five years, would amount to what?

A. I don't know as I could tell the average, some are worth more to do than others, it is pretty hard to strike an average in a case like this; some cost as much again as others when they come in.

Mr. BURRY: You have stated that you think the annual repairs

put upon a car during its life would have average about twelve to fifteen hundred dollars, if I remember rightly; does that include all the repairs that are put upon the sleeping car?

A. I think so, unless they are entirely altered over as we do sometimes.

Q. Does that include the repairs made upon the inside work of the car, the upholstering, etc.?

A. I cannot judge about the inside work; they furnish that to us, and I don't know what it costs.

714 Q. In addition to the $1,500 you have said is the annual average repairs put upon the cars, does the Pullman Company put any further repairs upon those cars?

A. They keep up the inside, the sleeping arrangement.

Q. What they do on the inside, sleeping arrangements, is that included, or in addition to the twelve or fifteen hundred dollars average estimated by you?

A. I intend to include it as near as I can, but I could not tell, I may be entirely out of the way, for I can't tell what they were costing because I never get any account of it at all.

Signature waived.

FRIDAY, *the 2d Day of December, A. D.* 1887.

Present: Mr. Lincoln, Mr. Burry, Mr. Johnson.

W. B. SNOW, a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. Burry, and deposes and says and follows:

Q. State your name, residence, and occupation?

A. W. B. Snow; residence, 2551 South Park avenue, Chicago; master mechanic of the Illinois Central car shops.

Q. In your position as master mechanic of the Illinois Central car shops, you have charge of the building and repairing of cars?

A. Yes, sir.

Q. How long have you been engaged in or about the building and repairing of cars in any way?

A. About forty-five years.

Q. Have you ever had any experience in building or repairing sleeping cars?

A. I have built quite a number.

715 Q. Are you familiar with the ordinary class of repairs that are usually put upon sleeping cars, and how often such repairs are necessary?

A. Yes, sir; I have got an idea about what they do; the Pullman repairs are more thorough than we used to make.

Q. The Illinois Central used to run its own sleeping cars?

A. Yes, sir; I think we have sixteen sleeping cars; I built them all.

Q. I understand that running or ordinary repairs have to be put upon the car every year or so; is that true?

A. Yes, sir.

Q. Then every four or five years you have to put on general or extraordinary repairs upon the car?

A. That depends on how they are used; if they get smashed up we do.

Q. As a usual thing?

A. We don't do it. Repairs run along about the same.

Q. You give them a general overhauling occasionally?

A. Yes, sir; get them in and clean them up and varnish and paint occasionally.

Q. About how often is that?

A. I think we used to paint the car about once in five or six years. It depends on how far they run.

Q. Then, you say you used to give them general repairs once in five or six years?

716 A. Yes, sir; I call it general repairs. We clean them all out and fix them up; repair everything that was out of order and add new equipment where it was necessary. I call that general repairs.

Q. Did you ever use to strip the cars; that is, take the wood-work off the frame?

A. Not unless it had been damaged.

Q. If sleeping cars are kept up in the manner I have mentioned, both by ordinary and running repairs, and by occasional general overhauling, will the car still last forever, or does it age?

A. No, sir; it will not last forever.

Q. Will you please state what, in your opinion, is the average life of sleeping cars upon which have been expended all the usual running repairs and general overhauling that are put on by sleeping car companies and railroad companies? By that I mean sleeping cars that have been kept up as sleeping cars are ordinarily kept up in the United States.

A. The average of all cars?

Q. All sleeping cars.

A. That I would have to guess at a good deal.

Q. Give your best judgment.

A. I should say about eighteen years; seventeen or eighteen. There is no data to go upon to answer such a question; in fact, I think it would be safe enough to answer the question at about seventeen years.

Q. Please state what, in your judgment, is the per cent. of depreciation per annum on such cars due to their age, provided they have received the repairs that are usually put upon sleeping cars.

717 A. I think the depreciation would be about six per cent.

Q. Six per cent. per annum?

A. Yes, sir.

Cross-examination by Mr. JOHNSON:

Q. Necessarily, of course, all these things are a matter of conjecture very much somewhat in the regions of guess, are they not?

A. Yes, sir.

Q. As far as you have experience there are no statistics with which you are familiar that show as an arithmetical demonstration any particular percentage of depreciation?

A. We have an established percentage in case of a car getting smashed up.

Q. You are talking about the Car Builders' Association rules?

A. Yes, sir.

Q. Their rule is, I think, six per cent. depreciation per annum, but, in no event, no matter how old the car, shall the amount be less than forty per cent. of its original cost?

A. Yes, sir.

Q. Even after seventeen or eighteen years of use, there is still a residu-m of value left that might be put at the forty per cent. which, under all circumstances, is left by the Car Builders' Association rules?

A. Yes, sir; there would be forty per cent. left.

Q. After seventeen or eighteen years.

A. I don't know. I used to figure a car at twenty-four years; one of our own cars.

Q. One of your own sleepers?

718 A. One of our own sleepers. I thought it would last about that time. We could keep it alive forever. You could do that by renewing every part of it two or three times.

Q. Then it might run thirty years?

A. Yes, sir.

Q. Your calculation was to keep it up as they are usually kept up?

A. Yes, sir.

Q. Twenty-four years you allowed for the life of a car?

A. Yes, sir; that is our own car; our own build.

Q. Of course, your deductions are largely made from the particular experience you have had yourself?

A. Yes, sir; our cars went into the Pullman association sixteen, seventeen and eighteen years old; I presume they will run as much longer now; they have been built up; it has taken that six per cent. to do it, and I don't know but more in some cases.

Q. After seventeen or eighteen years with cars kept up fairly well, what would you give as the value of a car at the expiration of that period—forty per cent., according to the car-builders' rules?

A. I don't know; I have not thought that over; I have not figured it.

Q. It might be that much and might not; you have not directed your attention to that yet?

A. According to the car-builders' rules, a car twenty-four years old, starting in with a valuation of $12,000, there would be $2,800 left then, something like that; that would probably be all the car would be worth.

719 Q. Under the car-builders' rules, however, if a sleeping car is eighteen years old and was running and had only the ordinary repairs to keep it up, and was destroyed, it would be allowed by them on the basis of forty per cent.?

A. Yes, sir; that is the way we figure it—that is, run over a certain age.

Q. It would then have reached the age where it would be put upon a forty per cent. basis?

A. Yes, sir.

Q. You have no experience that would lead you to say the rules are not wise and right?

A. No, sir; I think they are about right.

Q. I understood you, in reply to Mr. Burry, to put the matter thus: if you can every year, you send your cars into your shops for minor repairs?

A. We have to varnish it every year.

Q. And at the expiration of five or six years you put them in, if you can, for more complete radical repairs?

A. Yes, sir.

Q. What do you calculate is the cost of such repairs as are done, if possible, every year?

A. It would be from three to four hundred dollars.

Q. What would be a fair average for the sort of repairs required in the more general overhauling you give, if possible, every five or six years?

A. That would be six or eight hundred dollars, a thousand dollars in some cases it might be with all the trimmings to replace, etc.

Q. That would be considered a fair treatment of a car if a person had it in charge to take care of it and keep it up properly for another, would it not?

720 A. I should think so.

Q. What is the fair value of a first class sleeping car, such as the Pullman Company construct? I do not mean vestibule car, but the fair standard of the Pullman Company—what is its fair market value now?

A. I suppose about $12,000.

Q. Eight or nine years old, well kept up, say eight years old and well kept up say, what would be the value of the best standard of the Pullman Company?

A. Take $12,000 and six per cent. off that every year.

Q. That would take forty per cent. off, and would leave fifty-two per cent. of $12,000?

A. No, that is not the way we figure them.

Q. How do you do it?

A. I will show you a table we figure from; here is a table to go by.

(Witness produces a table showing how the figuring is done, and Mr. Johnson asks whether he will allow it to be attached to the testimony, to which the witness consents.)

Q. What is the cost of a pair of fifty-two-inch paper wheels?

A. I don't know what the cost is now; we have only one car with them on.

Q. You have used them on one car?

A. Yes, sir.

Q. For how long?
A. We have had them on the car, I guess, about four or five years.
Q. Has it been necessary to repair them?
A. It has not run much; it is an officers' car.

721 Mr. BURRY: The rule of the Masters Car Builders' Association you have referred to, fixing the depreciation, is a rule they have established for the purpose of settling a loss by the destruction of cars, is it not?
A. Yes, sir.
Q. To what class of cars do these rules apply?
A. Apply to freight cars, all but refrigerators; special cars cost a good deal more money; I suppose it would apply to them, too.

Signature waived by agreement of counsel.

Prices for Cars under M. C. B. Rules.

Eight-wheel box car, 32 to 35 feet long	$450 00
" " " " 32 feet long or under	430 00
" " cattle car, 32 feet long or over	450 00
" " ordinary stock car, 32 feet long or under	425 00
" " gondola car, 20-ton drop bottom	400 00
" " " coal car, 20-ton hopper bottom	450 00
" " " 31 feet long or over	350 00
" " ordinary gondola car, less than 31 feet long	300 00
" " " flat car, 31 feet long or over	300 00
" " " " under 31 feet long	300 00
Four " gondola car, with truck and drop bottom	305 00
" " box car	230 00
" " ordinary coal car	205 00
One pair 4-wheel trucks	200 00

722 *Charges for Wheels and Axles under Rule 9.*

Two new wheels, less scrap	$13 50
" " " " 2d hand	7 50
" " " " 2d hand	
1 scrap	10 50
" 2d-hand wheels, less scrap	7 50
" " 2d hand	
1 scrap	4 50
" " 2d hand	1 50

NOTE.—Where a new axle is used, 40 cents additional should be added for tunning.

One new axle, less scrap	7 00
" " " " 2d hand	4 00
" 2d hand " scrap	3 00

Table for Figuring 6 per Cent. Depreciation per Annum.

1st	year	06
2d	"	1164
3d	"	1694
4th	"	21924
5th	"	26608
6th	"	31012
7th	"	3515
8th	"	3904
9th	"	42698
10th	"	46136
11th	"	49368
12th	"	52406

Multiply the value by the per cent.—point off—and the result will be the amount of depreciation, which deduct from value to get the present value.

723 *Table to Find the Present Value at 6 per Cent. Reduction per Annum.*

1st	year	94
2d	"	8836
3d	"	8306
4th	"	78076
5th	"	73392
6th	"	68988
7th	"	6485
8th	"	6096
9th	"	57302
10th	"	53864
11th	"	50632
12th	"	47594

724 SATURDAY, *the 3d Day of December, A. D.* 1887.

Present: Mr. Lincoln and Mr. Burry for complainant; Mr. Johnson for defendant.

GEORGE F. BROWN, a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. Burry, and deposes and says as follows:

Q. State your name, residence and occupation?

A. George F. Brown, residence, Chicago; occupation, general manager of the Pullman Palace Car Company.

Q. How long have you been general manager of the company?

A. Upwards of two years, before that time for about four years I was general superintendent of the company.

Q. Are you acquainted with the terms of the present contract between the Pullman Company and the Pennsylvania Company?

A. I am.

Q. It is a contract relating to sleeping cars?

A. It is.

Q. Is the Pullman Company operating parlor cars upon that system?

A. It is.

Q. Under what arrangement?

A. Under a temporary arrangement.

Q. Is there any difference between the terms on which you operate parlor cars, as far as the Pennsylvania Company is concerned, from the terms under which you operate sleeping cars as to mileage, maintenance, earnings and so on?

725 A. No, sir, they are the same as the sleeping cars.

Q. I understand that the Pennsylvania Company has replaced the parlor cars with its own cars?

A. It has a right, as I understand it, to replace or substitute their own parlor cars at any time they may see fit.

Q. You are operating parlor cars on that system simply at sufferance?

A. That is the case.

Q. There has been introduced in evidence the present contract between the Pullman Company and the C., H. and D. R. R. Co.; it provides for the payment of mileage at the rate of three cents a mile per car run, by the railroad company to the Pullman Company; it has also been shown in evidence that no such mileage was collected during the seventeen months ending June 30, 1886; do you know why it was not collected and, if so, state?

A. Because the railroad company claimed that under a certain clause in the contract, I do not remember the number of it, that the earnings were sufficient to exempt them from mileage.

Q. Do you refer to that part of the contract which provides that when the gross revenue of the cars run under it shall amount to $7,500 per car per annum the mileage shall cease?

A. Yes, sir.

Q. Does the R. R. company claim that limit is reached?

A. Yes, sir.

Q. On that account they have refused to pay mileage?

726 A. They have, and the matter is in abeyance.

Q. Any negotiation going on, or is there a final refusal to pay?

A. I don't know of any actual negotiations at the present time. My understanding is, the Pullman Company has not conceded that claim.

Q. Have they ever paid any mileage since then?

A. Not that I am aware of, but that I am hardly in a position to answer.

Q. Because you don't know the operations of the accounting department?

A. Yes, sir.

Q. Under what contract is the Pullman Company operating its cars upon the railroad of the Indianapolis, Cincinnati, St. Louis and Chicago R. R. Co.?

A. According to my understanding we are operating those cars under a contract made between the Indianapolis and Cincinnati road and the old Central Transportation Company.

Q. The last contract you had with that road is the one assigned to the Pullman Company by the Central Transportation Company?

A. That is the case.

Q. Does the I., C., St. L. and C. R. R. Co pay mileage?

A. So far as I am informed they have not been paying mileage, but the claim is being made, that is, the Pullman Company has not waived the claim.

Q. Does that road refuse to pay you mileage?

A. That I would answer, they have not paid any mileage so far as I am advised; the Pullman Company holds they are obligated to pay mileage.

727 Q. Do they deny that obligation?

A. As I understand it, they do.

Q. Have you ever met Mr. Ingals, president of that road, in regard to this matter, or any other of the officers of that road?

A. In conversation with Mr. Ingals, this question has been brought up incidentally, but I never have had any negotiations with him in reference to it.

Q. Do you know the Alleghany Valley railroad?

A. Yes, sir.

Q. Can you state whether or not the Pullman Company was operating sleeping cars upon it before it passed into the control of the Pennsylvania Company?

A. It was.

Q. Did the Pullman Company have an anterior contract with it—a contract prior to that time?

A. It had.

Q. There were contracts with sixteen railroads assigned to the Pullman Company by the Central Transportation lease of 1870; I ask you which ones are now operated by the Pullman Company, and I will read eleven to you; are Pullman cars now operated upon roads of the following companies: The Pennsylvania Railroad Company, the Northern Central R. R. Co., the New York and Washington Through Line R. R. Co., the Pittsburgh and Fort Wayne R. R. Co., the Cincinnati, Hamilton and Dayton, the Dayton and Michigan R. R. Co., the Pittsburgh, and Cleveland R. R. Co., the Indianapolis and Cincinnati Railroad Co., the Terre

728 Haute and Indianapolis railroad, the St. Louis, Vandalia and Terre Haute R. R. Co., the Louisville, Cincinnati and Lexington, the Columbus, Chicago and Indiana Central and the Jefferson, Madison and Indianapolis railroad?

A. Pullman cars are being operated over those roads, or their successors.

Q. Are those eleven roads now embraced in the operation of Pullman cars over the roads known at present as the Pennsylvania system: the Cincinnati, Hamilton and Dayton railroad, the Cincinnati, Indianapolis, St. Louis and Chicago, and the Louisville,

Cincinnati and Lexington branch of the Louisville and Nashville road?

A. Yes, sir.

Q. Does the Pullman Company operate any cars over the remaining five roads, contracts with which are assigned to it, and being the Bellefontaine, Indiana and Indianapolis railroad, Baltimore and Ohio railroad, Marietta and Cincinnati railroad, Central Ohio railroad, and the Ohio and Mississippi railroad?

A. No, sir.

Cross-examination by Mr. JOHNSON:

Q. Under what arrangement are you operating the Ohio and Mississippi?

A. I cannot say, at this moment, whether we are running any cars on that road or not, but at the last advices that I had officially, we were running cars simply under our contract with the New York, Lake Erie and Western railroad.

Q. About how long a road is the Ohio and Mississippi?

729 A. I think about 340 miles.

Q. The Central Ohio Railroad Company is now what railroad?

A. I understand it is part of the Baltimore and Ohio.

Q. And that is about how long a road?

A. I can't say.

Q. The Marietta and Cincinnati Railroad Company still preserves the same name, does it not?

A. No, I think not.

Q. What is it now?

A. I can't say definitely, but it is part of the Baltimore system.

Q. About how long a road is that?

A. I think about 200 miles, but I am not positive.

Q. Then all those three roads, the Marietta and Cincinnati, the Baltimore and Ohio and the Central Ohio, forming part of the B. and O., had ceased to be operated by your company at the time it ceased to operate the Baltimore and Ohio main line?

A. I think that is the case.

Q. Was the contract with the Pennsylvania railroad, about running parlor cars in writing or verbal?

A. I cannot say, but my impression is that there is no formal agreement whatever in regard to the operation of parlor cars at the present time.

Q. Then, it must be a verbal understanding?

A. There may have been, perhaps, some written communications that have passed between the officers in regard to it.

730 F. C. N. ROBERTSON, a witness on behalf of the complainant, having been duly sworn, was examined in chief by Mr. Burry, and testified as follows:

Q. State your name, residence and occupation?

A. F. C. N. Robertson; residence, Chicago; occupation, first assistant auditor of the Pullman's Palace Car Company.

Q. Chicago is more than 100 miles from Philadelphia, is it not?
A. Yes, sir.
Q. How long have you held the position you now hold?
A. Since the 1st of January, 1886.
Q. What were you before then?
A. Assistant to the auditor.
Q. Of the Pullman Company?
A. Yes, sir.
Q. How long did you hold that position?
A. From the 19th of July, 1882.
Q. Are you familiar with the accounts and books of the Pullman Company kept in the auditor's office?
A. I am.
Q. Are you familiar with that part of the books showing the earnings and expenses of what is known as the Central division of the Pullman Company?
A. With the expenses; yes, sir.
Q. In what divisions of the Pullman Company are the Pennsylvania Railroad Company's lines?
A. The Central division.

731 Q. Have you, yourself, made, or assisted in making, any examination of the earnings and expenses of the Pullman Company on the Pennsylvania Company's lines for the seventeen months, ending June 30, 1886?

A. Yes, sir; some months ago.
Q. In what division is the Cincinnati, Hamilton and Dayton railroad?
A. The Central division.
Q. Have you made a like examination of the earnings and expenses of the Pullman Company on the lines of that road during the same period?
A. I have made it, or caused it to be made.
Q. Have you assisted in making such calculation?
A. Yes, sir.
Q. Have you made a like examination as to the earnings and expenses of the Pullman Company's business on the lines of the Cincinnati, Indianapolis, St. Louis and Chicago railroad?
A. I assisted in making it.
Q. In what division of the Pullman Company is that road?
A. Chicago division.
Q. Have you made a like examination of the gross earnings and expenses of the Pullman Company's business on the lines of the Louisville, Cincinnati and Lexington railroad during the same period of time?
A. Yes, sir; I assisted.
Q. What division is the last-named road in?
A. Southern.

732 Q. Have you prepared a summary of the earnings of the Pullman Company from its business over the lines of these four railroads, during the period mentioned?

A. I have.

Q. Have you made any calculations of any depreciation of the cars operated on these four roads, and interest on the amount of capital invested therein, in connection with this investigation you have made, as to the earnings and expenses of the four roads mentioned?

A. I have.

Q. Have these investigations and calculations mentioned, been made from the regular books of the Pullman Company in your charge?

A. They have.

Q. Are they based wholly upon such books?

A. They are.

Q. You have said that you have assisted in making these calculations; were the persons who assisted you in making the calculations employees of the Pullman Company in the auditor's office under you?

A. Yes, sir.

Q. Have you reduced the results of the investigations you have testified to making into the form of a statement, showing the earnings and expenses of the Pullman Company in its business over the lines of these four roads, during the seventeen months mentioned?

A. I have.

Q. Have you appended to that statement the calculations about the depreciations and interest?

A. Yes, sir.

733 Q. Will you please produce now, as the basis for your further examination, and incorporated at this time into your evidence, the statement referred to?

A. The statement referred to is on three sheets of paper, as follows:

Earnings.

Pennsylvania R. R. lines.

Gross earnings		$1,471,312 25

Expenses.

Operating and maintenance	$570,482 86	
Taxes (approximate)	14,166 66	
Repairs on 192 cars	438,075 61	
Total		1,022,725 13
Earnings		$449,087 12
Or at the rate per annum of		$317,002 67

Cincinnati, Hamilton and Dayton R. R. Co.

Gross earnings		$32,785 27
Expenses.		
Operating and maintenance	$11,299 45	
Repairs at 3 cents per mile run	11,802 87	
Total		23,102 32
Earnings		$9,682 95
Or at the rate per annum of		$6,835 02

734 Cincinnati, Indianapolis, St. Louis and Chicago R. R. Co.

Gross earnings		$42,565 75
Expenses.		
Operating and maintenance	$13,769 85	
Repairs at 3 cents per mile run	15,375 51	
Total		29,145 36
Earnings		$13,420 39
Or at the rate per annum of		$9,473 21

Louisville, Cincinnati and Lexington R. R. Co.

Gross earnings		$21,378 71
Expenses.		
Operating and maintenance	$8,839 32	
Repairs at 3 cents per mile run	7,720 26	
Total		16,559 58
Earnings		$4,819 13
Or at the rate per annum of		$3,401 74

Summary of Earnings per Year on All the Lines.

On the Pennsylvania R. R. lines	$317,002 67
On the Cincinnati, Hamilton & Dayton R. R.	6,835 02
On the C., I., St. L. & C. R. R.	9,473 21
On the L., C. & L. R. R.	3,401 74
Total	$336,712 64

735 Total earnings as above..... $336,712 64
Deduct depreciation at 6 % per annum on 204 cars, at $13,500 per car, or $2,754,000... .... 165,240 00

$171,472 64

Total earnings as above..... $336,712 64
Deduct depreciation at 5 % per annum on 204 cars at $13,500 per car, or $2,754,000..... 137,700 00

$199,012 64

Total earnings as above..... $336,712 64
Deduct depreciation at 7 % per annum on 204 cars, at $13,500 per car, or $2,754,000..... .... 192,780 00

$143,932 64

Total earnings as above, less 6 % depreciation..... $171,472 64
Deduct interest at 6 % on total equipment employed ($2,754,000) 165,240 00

Net earnings $6,232 64

Total earnings as above, less 6 % depreciation..... $171,472 64
Deduct interest at 6 % on total equipment ($2,754,000), less 119 cars at $3,000 each ($357,000), or $2,397,000. 143,820 00

Net earnings $27,652 64

Total earnings as above, less 6 % depreciation..... $171,472 64
Deduct interest at 6 % on 85 cars (being number operated in excess of 119), or $1,147,500... ..... 68,850 00

Net earnings..... $102,622 64

736 Q. On the statement I find the gross earnings on the four different lines I have referred to, for the seventeen months set out; did you prepare from the books the amounts there specified as gross earnings?

A. I had it done.

Q. By whom?

A. By Mr. Bird.

Q. Who is Mr. Bird?

A. He is now auditor of receipts.

Q. Then, you are not personally as familiar with these gross earnings as Mr. Bird is?

A. I am not.

Q. Are the gross earnings, as shown on the statement, correct, so far as you know?

(Objected to as immaterial.)

A. Yes, sir.

Q. Passing to the first item under the head of expenses I find

"operating and maintenance" on the Pennsylvania Railroad lines the amount being fixed at $570,482.86.

(Mr. Johnson objects here to any question addressed to the witness founded upon a paper not an original paper, but one embodying a calculation made partly by the witness and partly by somebody else; objecting to it, first, because of its irrelevancy—secondly, because the responsibility of the paper is not fixed upon any one who made the original calculations, and, thirdly, because the books themselves are not offered in evidence in order that any such calculation may be gone over in the interest of the defendants by some one appointed by them.)

737 Q. What is the name of the first item of expense in operating the Pennsylvania road concerning which you have made calculations as you have testified to?

A. Operating and maintenance.

Q. How much was the expense of the Pullman Company kept under the head of "operating and maintenance" in conducting its business on the Pennsylvania line during the seventeen months we are considering?

A. $570,482.86 as nearly as could be ascertained.

Q. State how you arrive at that item of expense from the books of the company, what was included in it?

A. An apportionment of the total operating expenses and maintenance in the Central division for that period as well as an additional expense for car-cleaning, which is not included in the total expenses.

Q. What proportion of the total operating expenses of the Central division did you charge against the Pennsylvania Company lines in arriving at the amount you have given?

A. $\frac{192}{254}$.

Q. Why did you take that proportion?

A. Because they were on the basis of 254 cars in the Central division, 192 of which were required for the service of the Pennsylvania line.

Q. Did you make that proportion yourself?

A. No, sir.

Q. What part of it did you not make yourself?

A. None of it.

Q. Who divided the sum total by the 254?

A. I made the calculation as to the result of that proportion.

738 Q. What part of the calculation did you not make?

A. I did not ascertain the number of cars.

Q. Who ascertained that?

A. Mr. Bird.

Q. In whose special charge is that portion of the books of the company from which is to be reckoned the number of cars employed on a line, or any division?

A. Mr. Bird.

Q. Will you please tell us what kind of expenses of the Pull-

man Company is included in the heading: "operating and maintenance"?

A. Administration expenses, division salaries, division expenses, district salaries, district expenses, conductors, porters, car-cleaners, washing, supplies, maintenance of upholstery and maintenance of equipment.

Q. What class of expenses is included under the heading: "administration expenses"?

A. Principally the salaries of general officers, traveling expenses, rentals of general offices, stationery required for them and so on.

Q. On what basis do you apportion these expenses among the different cars and divisions of the Pullman Company?

A. The total general expenses, administration expenses, for the month are prorated over all the cars operated by the company.

Q. The next heading you have mentioned was division salaries, in the amount charged against the Pennsylvania system are the salaries of what division or divisions?

A. Central division.

739 Q. Are all the salaries of the Central-division office charged against the Pennsylvania Railroad Line cars?

A. No, sir.

Q. How are they divided?

A. Charged against the cars in the Central division.

Q. Divided equally or otherwise among those cars?

A. In ascertaining the expenses against the cars they would be prorated, of course.

Q. Then, these division salaries were part of the gross expenses, operating and maintenance expenses of the Central division of which you spoke awhile ago, to which you apply that fraction you mentioned?

A. Yes, sir.

Q. The next heading was division expenses, what was included in that?

A. The rents of division office, traveling expenses of division officers and stationery for the division, and so on.

Q. Are those divided in the same way as the division salaries?

A. Yes, sir.

Q. The next heading you spoke of was district salaries and district expenses; how many districts are there in the Central division?

A. I think there are about sixteen.

Q. Are the expenses of the same general nature as those of the division salaries and division expenses?

A. Yes, sir.

740 Q. Are they mixed in any way or kept distinct?

A. They are kept distinct.

Q. Is the proportion of them charged against the Pennsylvania Line cars in the manner you have before indicated concerning division salaries and expenses?

A. Yes, sir.

Q. The next items you mentioned were conductors and porters; were those conductors and porters employed in the Central division?

A. Before I reply to that I would like to say a word in regard to the division of district salaries and expenses. You asked me if they were divided in the same way as division salaries and expenses, there is a small adjustment made as between the divisions there.

Q. What is the adjustment; what calls for it?

A. It is due to the fact that the Central division handled cars belonging to other divisions, and *vice versa.*

Q. On what princip*al* do you make the adjustment?

A. There is a proportion of the expenses of the Chicago division which is charged to the Central division, and I think a portion of the Central division charged to the Chicago division.

Q. Is that where one district officer manages cars of both divisions?

A. Yes, sir.

Q. You apportion his salary?

A. Yes, sir.

Q. The next items you mentioned were conductors and porters; were those conductors and porters employed in the Central division?

741 A. They were employed in the Central-division cars.

Q. What expenses are there in connection with conductors and porters?

A. Simply their salaries.

Q. How are those salaries charged?

A. They are distributed by the operating officers; their distribution comes to this department.

Q. The next item mentioned was car-cleaners; what expenses are there under that head?

A. The salaries of car-cleaners and material used by them in cleaning cars.

Q. How is that expense apportioned?

A. To the respective cars which they clean.

Q. The next item was washing; what was that?

A. That was the washing of the linen.

Q. How was that charged or distributed?

A. To the cars whose linen was cleaned.

Q. You mean to each car for its own linen.

A. Yes, sir.

Q. The next item is "operating supplies," what does that include?

A. It includes manilla paper, soap, mats and other articles.

Q. How is that charged?

A. The total supplies in the division are prorated to the cars operated.

Q. The next item mentioned, was maintenance of cars, and maintenance of upholstery, what do those items refer to?

A. They are actual repairs done to the cars and equipment.

Q. What is the nature of those repairs?

742 A. For instance, repairs to the plush, berth fronts, trimmings of the cars, etc.

Q. All inside?

A. All inside.

Q. Does that include any repairs put upon the bodies and trucks of cars, and repairing them as far as the running vehicle goes?

A. It does not.

Q. Are you familiar with the affidavit made by Mr. Little, filed in this cause, concerning the subject-matter of which you have been testifying?

A. I am more or less familiar with it.

Q. Did you assist in the preparation of that affidavit?

A. I did.

Q. In that affidavit, the operating and maintenance of Pullman cars on the Pennsylvania Railroad lines, for these seventeen months, was stated at about $641,000; you have testified to about $570,000; can you explain to us how that difference arose, and why the charge was so large for operating and maintenance in that affidavit?

A. I can.

Q. Please do so.

A. It was a mistake that was inadvertently made at the time, according to my recollection. A wrong basis of proportion being taken.

Q. Tell me the figures or exact thing on which the mistake arose, was it in adding, multiplying, substracting, or what?

A. It was in dividing the total expense by the wrong factor to ascertain the average.

Q. What factor have you divided it by?

743 A. 254 cars.

Q. What factor was the division made by when you say a mistake was made?

A. By 224 nearly.

Q. Then, the person who made the division referred to, divided by 224 instead of 254, is that correct?

A. Yes, sir; it was nearly 224, it was not exactly 224.

Q. Do you know how he came to make that mistake?

A. I cannot say, it was inadvertently made.

Q. What does 254 represent in that calculation?

A. It represents the cars used in the Central division.

Q. What does 224 represent?

A. It represents about the average per month of the cars operated in the Central division.

Q. Actually running?

A. Yes, sir.

Q. In ascertaining the earnings of the Pennsylvania lines during the period mentioned, seventeen months, have you charged against the Pennsylvania Railroad lines any taxes?

A. Yes, sir.

Q. How much?

A. $14,166.66.

Q. Where did you get that figure?

A. I found that bills had been rendered for taxes due the State of Pennsylvania, which amounted to about $12,500 per annum.

Q. Who rendered those bills?

A. The State of Pennsylvania.

744 Q. Have you seen the original bills?

A. Yes, sir.

Q. Under the seal of State?

A. Yes, sir.

Q. How much do they come to a year?

A. About $12,500.

Q. How much, according to your calculation, have you charged against the Pennsylvania line per year?

A. $10,000.

Q. How much does that make for seventeen months?

A. $14,166.66.

Q. On what basis did you divide $12,500, so as to put $10,000 against the Pennsylvania line?

A. I estimated with Mr. Bird, that the taxes due to the other earnings which were made in that State, were about $1,000 per annum; it would be about that, and we called that $2,500 to be on the safe side, and made the amount due by the Pennsylvania lines, $10,000.

Q. In the affidavit made by Mr. Little formerly referred to, the taxes chargeable against the Pennsylvania railroad for the seventeen months are stated at $8,500; do you know how that discrepancy arose?

A. That figure was based upon $6,000 per annum, which was the figure given us by the legal department.

Q. Did you or Mr. Little make any particular investigation to find out the exact amount of taxes before making that estimate as it was called in the affidavit?

745 A. I did not.

Q. Why not?

A. Except to inquire of the legal department.

Q. Why not?

A. We asked questions if you call that an investigation.

Q. Why didn't you make a fuller investigation to get at the figures?

A. I presume we made it as full as we could at the time.

Q. Had the length of time given in which to prepare that affidavit anything to do with the completeness of the investigation made?

A. Yes, sir, it had.

Q. What is the fact?

A. They did not give us sufficient time to make all the investigation we wished to do.

Q. Will you now state the next item of expense you have charged against the Pullman cars on the Pennsylvania Railroad lines?

A. Repairs on 192 cars $438,075.61.

Q. What does the word "repairs," as you have just given it include?

A. Repairs on bodies and trucks principally on the outside of the car.

Q. Is this amount you have just stated based upon the regular books of account of the Pullman Company under your charge?

A. Yes, sir.

Q. You will please state on what basis you charged that amount against the sleeping cars operated on the Pennsylvania Railroad lines.

746 A. I have prepared a statement of the total mileage made by all the cars which made earnings on the Pennsylvania lines during that period, a statement of the mileage made on the Pennsylvania system, and the total repairs charged against those cars; the total mileage was used to ascertain the proportion of repairs chargeable to the Pennsylvania lines, that gave some $401,000; then there were thirty-five parlor cars which ran more or less during that period, within which there were certain repairs and other charges made, remodeling, etc., and the repairs on those cars were estimated in this way; the total time that they ran was ascertained to be equivalent to about 297 months for one car; that was multiplied by the average repairs per car per month of the 192 cars, and that amount was added to the $401,000.

Q. Do you remember what the average repairs per car per month was?

A. It was about $123.

Q. That you multiplied by this number of months you have spoken of?

A. Yes, sir.

Q. And the result was how much?

A. Something over $36,000.

Q. In Mr. Little's affidavit the amount is put down as about $401,000; you have stated the amount to be over $438,000?

A. Yes, sir.

Q. Did that difference come from these thirty-five cars spoken of?

A. It did.

Q. Do you know how there happened to be omitted from Mr. Little's affidavit this item of over $37,000 of repairs?

747 A. It was because of the fact that the repairs and remodeling put on those cars was kept in a special account and was simply overlooked at the time.

Q. Are the earnings of those thirty-five cars included in the earnings included in Mr. Little's affidavit and in the statement you have produced for the seventeen months?

A. I cannot say definitely whether that was overlooked or not (referring to statement); they are.

Q. In the figures given by Mr. Little's affidavit are there any repairs charged on account of those *those* thirty-five cars?

A. None.

Q. Why were the repairs on those thirty-five cars kept in a special account and not together with the other cars, the cars of the Central division?

A. Because of the fact that they were withdrawn from the maintenance basis.

Q. The maintenance of what?

A. Under the old contract.

Q. Which one?

A. With the Pennsylvania Company. The repairs necessary to be put upon them to bring them up to standard condition were appraised, and the Pennsylvania Company agreed to pay us a fund, $80,000, to pay for those repairs, and a special account was created, as we always do, for the purpose of ascertaining how we came out, and not put in the ordinary repairs. That created a fund, and the account is charged with actual repairs.

748 Q. Do I understand the $80,000 was for the repairs that ought to have been made under the old or new Pennsylvania contract?

A. Under the old contract.

Q. The cars had been suffered to run down?

A. Yes, sir.

Q. Was anything done to these cars besides putting them in repair?

A. They were remodeled, most of them.

Q. Do you know the amount shown to be expended on those cars by that special account you speak of?

A. Yes, sir.

Q. About how much?

A. About $145,000.

Q. Up to date?

A. Up to that date.

Q. Of that $145,000 expended on those cars, I understand you to charge $37,000 in this account; is that correct?

A. I don't know that all the cars had undergone repairs at that time, during that period of seventeen months. There are some charges against all of them; some of them are small amounts.

Q. The aggregate of all the charges was about how much?

A. $145,000.

Q. Of that, how much do you charge in statement you have produced before the commissioner?

A. I can hardly say just how much of that $37,000 was included in that $145,000, but by far the bulk of it, if not the whole of it.

749 Q. After making these charges you have mentioned against the earnings of the Pullman cars on the Pennsylvania line, as reported by Mr. Bird, what do you get as the result?

A. $449,087.12 for the seventeen months.

Q. That is the earnings for how long?

A. Seventeen months.

Q. At what rate per year is that?

A. $317,002.67.

Q. Calling your attention now to the Cincinnati, Hamilton and Dayton railroad, can you state the amount of gross earnings upon that line during the same period of seventeen months?

A. $32,785.27.

Q. Will you state the amount of operating and maintenance charges against the cars on that line of road during the same time, ascertained in all respects in the same manner as you have testified the charges under that heading were ascertained in the case of the Pennsylvania Company?

A. $11,299.45.

Q. What charge have you made against the earnings of that road on account of repairs to cars, referring to repairs to the bodies, trucks, etc.?

A. $11,802.87.

Q. Did you ascertain that amount of repairs in the same manner in which you ascertained the repairs upon the Pennsylvania road?

A. No, sir.

Q. Explain to us how you ascertained that amount you have last mentioned as repairs?

A. Estimated at three cents per mile run.

Q. Do you mean that you have charged as repairs of the Pullman cars operated on that road three cents for every mile they ran?

750 A. No, sir; I mean we estimated the repairs equivalent to the mileage received, three cents per mile run, that the repairs would cost that.

Q. You mean that you received mileage on those cars?

A. I may be mistaken in giving that reply; I am not sure we have received mileage, but I look at the repairs as costing three cents; I considered that a fair figure to put the cost at.

Q. You actually did get this amount you have just testified to by multiplying the number of miles run by these cars by three cents?

A. Yes, sir.

Q. Now, why did you charge three cents per mile run?

A. Because I considered it a fair figure to charge.

Q. Have you had much experience in reckoning repairs on sleeping cars?

A. I have had considerable.

Q. Do you know what railroads usually pay for the maintenance of sleeping cars upon their lines of road?

(Objected to as immaterial.)

A. Yes, sir; three cents.

Q. Why do you not calculate the repairs on these cars by the repairs actually put upon them, as in the case of the cars upon the Pennsylvania railroad line?

A. If I recollect rightly, we were pressed for time, and estimated it.

Q. You refer in the answer to the making of the affidavit?

(Objected to.)

A. Yes, sir.

751 Q. Why do you not do it now?

A. It is a difficult matter to get at the repairs on those cars.

Q. Why is it more difficult in that case than in the Pennsylvania Company case?

A. I don't know that I can give you a proper answer in regard to that difficulty. Mr. Bird is more familiar with the running of cars than I am.

Q. Take the gross earnings of the Pullman cars on the Cincinnati, Hamilton and Dayton road, as stated, and deducting from that the operating and maintenance expenses and repairs, as just testified to by you, what remains of the earnings?

A. $9,682.95.

Q. For what period?

A. Seventeen months.

Q. How much is that per year?

A. 6,835.02.

Q. In the affidavit of Mr. Little filed in the case, the operating and maintenance of this line of road for the seventeen months is placed at $12,787.40; you have given it at somewhat less; how do you account for the difference?

A. In the same way as the difference on the Pennsylvania line.

Q. You refer to the same item of operating and maintenance on the Pennsylvania line?

A. Yes, sir.

Q. Is the Cincinnati, Hamilton and Dayton in the Central division?

A. Yes, sir.

Q. In that case, also, 224 was used as a divisor instead of 254?

752 A. Yes, sir.

Q. Which is correct?

A. 254.

Q. The gross earnings given in Mr. Little's affidavits were over $39,000 on this road, the repairs over $17,000. The earnings have been reduced to $32,000, according to the statement you have furnished, and the repairs to about $11,000; explain that difference.

A. The difference, I believe, is due to the error that was made in the mileage, an error in ascertaining the total mileage.

Q. The amount of mileage you now allow on cars of this line is smaller than was allowed in Mr. Little's affidavit?

A. Yes, sir.

Q. The Cincinnati, Indianapolis, St. Louis and Chicago railroad lines are in what division of the Pullman Company service?

A. Chicago division.

Q. Please state the gross earnings made by the Pullman cars upon that line of road during the seventeen months?

A. $42,565.75.

Q. Against those earnings how much operating and maintenance is there charged on the books of the company?

A. I make it $13,769.85.

Q. Now, that is not in the Central division; how do you arrive at that item of operating and maintenance?

A. By the same method in the Chicago division as we do
753 in the others: by taking the proportion of the total operating and maintenance expenses of the division.

Q. Then all the operating and maintenance items in that statement are reckoned on a car basis?

A. Yes, sir.

Q. And apportionment according to the number of cars?

A. Yes, sir.

Q. How much repairs do you charge against the earnings upon this lines?

A. 15,375.51.

Q. Are those repairs reckoned so much per mile run, or a proportion of the repairs actually put upon all cars?

A. So much per mile run.

Q. Can you explain why you do not now apply the same system to this item of expense that you did to the corresponding ones on the Pennsylvania lines?

A. I am not familiar myself with the reason why it was done, there is some difference in the situation, I think.

Q. Deducting from the earnings from this line the operating, maintenance and repair changes you have mentioned, what remains of the earnings of the company on that line?

A. $13,420.39.

Q. For seventeen months?

A. Yes, sir.

Q. How much is that a year?

A. $9,473.21.

754 Q. For the item of operating and maintenance upon this road, you have again given us a sum smaller than that under the same heading in the affidavit of Mr. Little referred to, explain how the discrepancy arose?

A. It was in the same way by taking a wrong factor for ascertaining the average per car, just what the old factor and the new factor were, I cannot tell at this moment.

Q. Passing to the Louisville, Cincinnati and Lexington railroad, in what division is that?

A. Southern division.

Q. It forms part of the Louisville and Nashville system?

A. I believe so.

Q. What are the gross earnings upon that line for the same period of seventeen months?

A. $21,378.71.

Q. Against those earnings what do you charge for operating and maintenance against the cars operated on that line?

A. $8,839.32.

Q. How do you arrive at that amount?

A. By taking the average expenses per car of the division to which the cars belong, and multiplying by the number of cars.

Q. How much have you charged against the earnings on that line for repairs of cars used?

A. $7,720.26.

Q. Are those repairs reckoned upon a mileage basis or upon a proportion of the amount expended on the cars?

A. Mileage basis.

755 Q. Deducting the two items given for operating and maintenance and for repairs upon this line of road, what do you get as the earnings of the line?

A. $4,819.13.

Q. For the seventeen months?

A. Yes, sir.

Q. How much for one year?

A. $3,401.74.

Q. Please give a summary of the earnings of these four lines for a year on the calculations you have just testified to, after deducting, operating and maintenance charges, repair charges, and the taxes which have been testified to by you.

A. $336,712.64.

Q. In making these charges against the Cincinnati, Hamilton and Dayton, the Cincinnati, Indianapolis, St. Louis and Chicago, and the Louisville, Cincinnati and Lexington, have you made any charge for taxes against them?

A. I have not.

Q. Why?

A. Because the amount would not be very large, and I gave them the advantage of it.

Q. Does that last figure you have given make any deduction from the earnings of Pullman cars upon the lines of railroad mentioned, on account of depreciation of the cars used to make the earnings?

A. It does not.

Q. Do you include in the expenses you have charged against these different lines anything on account of interest on the capital invested in these cars, or any of them?

A. No, sir.

756 Cross-examination by Mr. JOHNSON:

Q. As I understand, you do not carry in your head any of the data, nor do you have original knowledge of the data upon the basis of which you made these calculations?

A. If you mean I have not taken the figures off of the books myself you are right to a certain extent.

Q. In the first place and apart from what the books show you could not possibly have produced these calculations, could you?

A. Apart from what the books show?

Q. Yes.

A. No; I could not without the books.

Q. Then, what you have given here is the result of an examination by yourself and by others of the books of the Pullman Company?

A. Yes, sir.

Q. Not only could you not give the information that you have put into this testimony without the books, but it was a matter about which you have no original knowledge, is it not?

A. I do not clearly understand what you mean by original knowledge.

Q. Your knowledge is derived from the books, and the books themselves are the result of the entries of clerks who themselves receive reports from other people?

A. Yes, sir.

Q. And about depreciation and all matters you have embodied here, you have no knowledge other than what the books give to you?

A. Exactly.

757 Q. And you cannot now define to what extent even the calculations have been made by yourself, and to what extent calculations on the paper from which Mr. Burry has been examining you, have been derived from others?

A. I can tell what calculations I have made.

Q. Which of the calculations have you made?

A. I have taken off from our books the total operating and maintenance expenses by months in the Central division, and I have made a calculation of the proportion to the Pennsylvania cars, I have had given me the total operating and maintenance expenses in connection with the C., H. and D., the C., I., St. L. and C., and the L., C. and L. and have made the calculations of the proportions; I have also calculated the depreciation that comes in here.

Q. Then, even many of the calculations on these papers are made by others than yourself, and where you made the calculation others may have taken the figures from the books?

A. Yes, sir.

Q. Name the books and papers which you have examined in order to qualify you to make these calculations?

A. I have examined more or less what we call our division distribution books, showing the total operating and maintenance charges, and I have examined more or less the mileage sheets rendered by the earnings department to us, and I am familiar, of course, with all the books of our own department, and know when I want certain information what books to go to.

758 (Mr. Johnson asks Mr. Burry whether he will produce the books from which the witness's calculations have been made in order that the same may be examined.)

(Mr. Burry says the complainant has here in this office its original books of the auditor's department, and is willing that they should be examined to verify any and all figures and calculations that Mr. Robertson has sworn to.)

Q. Let me see the calculation similar to this that you have made for the first year's operations under the new contract with the Pennsylvania railway?

A. I do not know there is any such paper in existence.

Q. Don't you know in the first instance the paper was made and

sworn to by Mr. Little, showing the results of the first year's operations unembarrassed by any additions or fractions of a year?

A. The year ending February 1, 1886?

Q. Yes. There was such a calculation made, was there not?

A. Yes, sir.

Q. You helped to make that?

A. Yes, sir.

Q. You are aware, are you not, that the result of such a calculation based upon the first year's operations unembarrassed by the additions of any fractions of a month, was more favorable to the amount of net earnings than the calculation which you have made out including a year and a fraction of a year?

A. Yes, sir.

Q. To what extent, nearly $20,000, as the original calculation shows, was it not?

759 A. About $15,000.

Q. Were you ever requested to make out any calculations on the revised basis that the present calculation has been made out on, on the basis of the year ending February 1, 1886?

A. No, sir.

Q. Have you made out any calculation for the two years ending the 1st of February, 1887?

(Objected to on the ground that the earnings after the 1st of July, 1886, are not material to this case.)

A. I do not know that I have made it out.

Q. Have you made any calculation for an additional year subsequent to the 1st of July, 1886?

(The same objection.)

A. Not unless it is in that report.

Q. When does the fiscal year of the Pullman Company close?

A. July 31st.

Q. Why did you stop in that calculation just with seventeen months? Why didn't you make it eighteen months, closing with your fiscal year?

A. I made out what I was instructed to make out.

Q. By whom?

A. I don't recollect whether it was the auditor or not.

Q. Try and recall under whose instructions your calculations are limited to seventeen months, and also limited to a period which did not include the termination of a fiscal year?

A. I do not recollect positively, but I think it was by the instructions of the legal department.

760 Q. Have you any idea how the result for the year closing your last fiscal year compared with the previous result?

A. I do not know.

Q. Now, do you now know how the result of the first year under the new lease would show if made out upon the revised basis on which the list from which you were examined is made out?

A. No, sir.

Q. To what extent did you help Mr. Little in making out the figures and calculations embodied in his affidavit of the 23d of April, 1887?

A. I supervised the work generally, and more particularly in regard to expenses, and checked back some of the calculations.

Q. It was a matter prepared and supervised and gone over in the auditor's department in which you took a considerable part; is not that a fact?

A. Yes, sir.

Q. Will you tell me what occasioned the hurry which prevented your getting accurate results on that occasion?

A. The only reason I know was that we were required to get it by a certain day.

Q. I notice the date of the affidavit is April 23, 1887, and the results are carried down to the 1st of July, 1886; there was no difficulty, was there, in making up the results, on the basis closing on the 1st of July, 1886, at so late a date as the 23d of April, 1887?

A. There is always a great deal of work in making up results for a period ending at an odd time.

761 Q. As your fiscal year ended the 31st of July, it would have been easier then to have made your calculation taking in six months of the current fiscal year?

A. Probably.

Q. You don't know why it was you were exposed to the additional trouble of dividing the year into fractions of a month?

A. We simply made it that way because we were asked to do so.

Q. It increased the labor, did it not?

A. Yes, sir.

Q. And made the getting at the result less simple?

A. Not necessarily less simple.

Q. Why not?

A. An increase of labor would not mean any more complication.

Q. Didn't you have to break up all the figures instead of taking the total earnings?

A. That would mean more labor, but not necessarily more complication.

Q. Wouldn't it make it more difficult for anybody comparing the results with anything that appeared on the face of the books?

A. No, I think not.

Q. Would not the results show at the end of the year in the aggregate on your books, and would the results of five-twelfths of a year show on your books, would not the result have to be deduced from it?

A. That may be more work; it would mean simply more work.

762 Q. Do you mean more work in comparing results you have given with the books than in comparing results of the conclusion of a fiscal year with the books?

A. Probably.

Q. Now, let us see to what extent, through this hurry, you fell into error in the first calculation that was made. The amount of

the gross earnings is the same in both calculations for seventeen months?

A. Yes, sir.

Q. When you get the operating and maintenance expenses, there is a difference of about $70,800 in favor of the Central Transportation Company in the revised calculation for operating and maintenance?

A. Yes, sir.

Q. There is a difference against it for taxes of about $5,600, is there not?

A. Yes, sir.

Q. There is a difference in the revised calculation against it for repairs of about $36,500, is there not?

A. Yes, sir.

Q. You have made out, in your first calculation, depreciation on the revised basis of $165,000 per annum, whilst in the former calculation you made it out on the basis of $\frac{1}{1}\frac{2}{7}$ths, or $183,600, did you not?

A. Yes, sir.

Q. But the $165,000 is all for the cars, and twelve additional, and the difference between five and six per cent. depreciation; who told you to make out the calculation on the basis of depreciation of six per cent.?

763 A. Mr. Burry.

Q. Your share of that is doing the figuring, to show what the result was?

A. Yes, sir.

Q. Disregarding, therefore, the matter of depreciation, which is one of merely figureing upon five or six per cent. per annum, the present calculation corrects the four items, one of gross earnings and three of expenses, operations and maintenance, taxes, repairs on 192 cars; in all, the three items of expense, was it not?

A. Yes, sir.

Q. There are very considerable differences in each of those items?

A. Yes, sir; in the Pennsylvania system.

Q. Take up the Cincinnati, Hamilton and Dayton, as the affidavit was sworn to, the gross earnings would foot at $39,840, whereas now they are put at $32,785?

A. Yes, sir.

Q. Have you as yet explained how that error was made?

A. I have explained it, although I am not familiar at the moment with the details, but it was an error in making returns, by Mr. Bird, of the mileage.

Q. Let us see whether the error stops in that; you then had the operating and maintenance expenses in the old calculation, $12,787?

A. Yes, sir.

Q. And the present calculation $11,299?

A. Yes, sir.

764 Q. I think you have explained that to have arisen from a miscalculation as to the total number of cars in the division?

A. Yes, sir; an inadvertence in taking the wrong number of cars.

Q. Then, the repair account on the old calculation is $17,309.88, whilst the repairs on the new calculation are $11,802?

A. That is due to the same error, in the return of the mileage.

Q. Therefore, in the one item of gross earnings, and two items of expenses making up that calculation, you fell into an error in preparing the calculation embodied in Mr. Little's affidavit in every one of those three particulars, did you not?

A. Yes, sir.

Q. And also calculated depreciation on the basis of five per cent. then as against the basis of six per cent. now?

A. Yes, sir.

Q. You discovered that error at a later period?

A. Yes, sir.

Q. Some time in July, 1887?

A. The error in the mileage? I don't know just when it was discovered.

Q. Let me read the calculation as you amended it: "For 17 months ending July 1st, 1886, gross earnings, $32,785.27; expenses, operating and maintenance, $12,787.40; repairs at three cents per mile run, $11,802.87." I do not carry out the rest of them, because it embarrasses our calculation by including the result of the five per cent depreciation, but, even then, with all the leisure you had, you fell into an error in one of the three items, did you not, operating and maintenance?

765 A. That error was not discovered then—not known to be an error.

Q. Then you put that item at $12,787.40?

A. Yes, sir.

Q. So that, even in July, when you corrected your affidavit, which formerly was wrong in all three of its items, you still maintained an error in one?

A. Yes, sir.

Q. The gross earnings of the Cincinnati, Indianapolis, St. Louis and Chicago for the seventeen months were put in the old calculation, as in the new, at $42,565.75, were they not?

A. Yes, sir.

Q. Operating and maintenance are put at $13,769.85, and the repairs at $15,375.51, making an error then in one of the three items, operating and maintenance, of about $2,000?

A. Yes, sir.

Q. You have explained how that arose, let me see whether the Louisville, Cincinnati and Lexington, was free from error because as I understand, the Cincinnati, Hamilton and Dayton is in the Central division, the Cincinnati, Indianapolis, St. Louis and Chicago is in the Chicago division, and the Louisville, Cincinnati and Lexington is in the Southern division?

A. Yes, sir.

Q. Take the Louisville, Cincinnati and Lexington, you made the gross earnings $21,378.71, you made the operating and maintenance $8,839.32, and you made repairs $7,720.26, did you not?

A. I believe so.

Q. That was right in all three particulars?

766 A. Yes, sir.

Q. Will you please produce the contract under which the Pullman's Palace Car Company operates on the Cincinnati, Hamilton and Dayton, the Cincinnati, Indianapolis, St. Louis and Chicago, and the Louisville, Cincinnati and Lexington railroad?

(It is understood the contract will be produced in the morning and the cross-examination upon that point is deferred until that time.)

Q. Tell me again why it was that in calculating the repairs of those three railroads you calculated them upon the principles different from the Pennsylvania Railroad lines.

A. I cannot tell you at present about the difficulty of getting them on the same basis as the Pennsylvania lines.

Q. What could possibly have been the difficulty in the case of the Cincinnati, Hamilton and Dayton; there were four cars running in the line, were there not?

A. Yes, sir.

Q. What was done in the case of ascertaining the proportion of repairs on the Pennsylvania line, 192 cars?

A. In ascertaining the proportion of repairs?

Q. Yes.

A. It was not done by the car it was done on a mileage basis.

Q. Give me the number of miles in the case of the Pennsylvania railroad.

A. About 30,000,000 of miles.

Q. Will you get me the accurate figures on that?

A. Total mileage 30,343,729.

767 Q. Tell me with regard to the Cincinnati, Hamilton and Dayton, which was run in the Central division, the number of miles run are before you, and cost upon the basis of miles run, and you calculated what the repairs would be at three cents a mile, and the number of miles run was about 293,429 on the Cincinnati, Hamilton and Dayton?

A. Yes, sir.

Q. I also see that this paper before you gives the total miles run 30,343,729, would there have been any difficulty to so expert an accountant as yourself multiplying 591,432 total repairs on the division by 393,429, the number of miles run on the Hamilton and Dayton railroad, and dividing by 30,343,729, the total miles run in the system?

A. That would not have been a difficult calculation.

Q. It was precisely similar to the calculation made in the case of the Pennsylvania Company, was it not?

A. Yes, sir.

Q. The result of that, however, would have been if you had dealt

in the same way with the repairs account, that the total repairs would have been only a little over $7,600, instead of $11,802, which you calculated, is not that so?

A. It is not a similar case, your basis is not correct. The total miles run by the cars would not be represented.

Q. Is not this the total mileage of the Central division?

A. No, sir, the total mileage of cars attached to the Pennsylvania system.

Q. Where is the paper that will show me the total mileage of the Central division?

768 A. I doubt if there is one in existence.

Q. Could you not make it up?

A. It would be a tremendous piece of work.

Q. Any more than making up the mileage before me?

A. That was a very large piece of work.

Q. Whilst you were making it up there would have been no difficulty?

A. The total mileage in the Central division?

Q. Yes.

A. No, it would not be so very large, it could be done tonight, I think.

Q. Have you any idea how many more miles the whole Central division made?

A. I have not; that is not the repairs of the Central division, that is just the repairs of cars that made the Pennsylvania earnings.

Q. Would it not have been easier to have taken the Central division intact and have made that calculation?

A. It would not be correct.

Q. Why not?

A. Because there is a direct relation between the total repairs and the total mileage, therefore, it seems to me it is evident at once that the proportion of repairs due to the Pennsylvania mileage is the proportion that the Pennsylvania mileage bears to the total mileage on those cars.

Q. When you came to charge operating and maintenance expenses against the Pennsylvania lines, on what basis did you divide?

A. On the basis of average expenses per car.

769 Q. Why did you divide one on the basis of average expenses and another on the basis of mileage?

A. Because there is no analogy, or at least very little analogy between them.

Q. How are they different?

A. The operating expenses of a car do not follow the mileage; you may have one run of a thousand miles, and another run of the same distance, and yet the operating expenses of the one run may be a great deal more than the other, there is by no means the same direct relation between operating expenses and mileage, as between repairs and mileage; you can run a car empty and it does not affect the relation of repairs to mileage.

Q. The more it is run, the more apt it is to require repairs?

A. You may run a car empty, and the repairs to the body and trucks would not be affected by the fact that it is empty, but the expenses inside would be much affected by that fact.

Q. How long would it have taken you to have calculated the actual repairs you put on the four cars on the Cincinnati, Hamilton and Dayton line, by taking the actual repairs to those cars?

A. You would have to ascertain all the cars that made those earnings, it is not four cars alone.

Q. Did you not, in the affidavit made up by Mr. Little, or did not the affidavit say that the number of cars on the Cincinnati, Hamilton and Dayton was four?

A. The meaning of that is, that it requires four cars to fill those lines and make the run, but it may be, twenty-five really made the earnings.

770 Q. Is it a fact, in that line there were possibly twenty-five cars running?

A. I can't tell, there may have been. Mr. Bird can tell.

Q. You don't know but what four cars were assigned to that road?

A. I know they were not assigned.

Q. No assignment whatever?

A. No assignment made, unless I am mistaken.

Q. Your calculation of repairs on 192 cars, as you made it out on the Pennsylvania railroad, is no calculation based on actual repairs done to any 192 cars on that line?

A. Not on any 192 cars, but on all the cars that helped to make the earnings, that is the only way to get at repairs when they don't stick to one line.

Adjourned to 10 a. m., November 30th.

Parties met pursuant to adjournment at 10 a. m., November 30th, and the cross-examination of the witness was resumed as follows:

Q. Referring now to the paper which you made out, for the purpose of charging against the Pennsylvania Railroad system the amount of repairs for seventeen months, I propose now to examine you upon that paper; this paper is a grouping of results for each month, commencing February, 1885, and ending June, 1886, inclusive. Where are the data that totaled the respective footings up for these various months; I wish to see that, in order that I may see what cars made the mileage, and what repairs were done in detail to those cars.

771 A. I here produce memorandum books, showing mileage and repairs of cars for the months for a portion of the time specified, all except June, 1886.

Q. In Schedule B of the agreement of the Pennsylvania Company with the Pullman Company, of January 26, 1885, I find included in the assignment of 100 cars, the cars Servia and Thracia; I also find those cars are announced in your schedule of lines, No. 101, to be running on the Pennsylvania railroad as part of the 100 assigned cars; be kind enough to turn to the two books you have handed to

me, which embody the mileage of all cars of the Pennsylvania Railroad line for sixteen of the seventeen months, and find where you have credited any mileage to the Servia and the Thracia?

A. They appear under their respective numbers, 351 and 353.

Q. In charging the repairs of this kind you included in your list of repairs, reconstruction, rebuilding and remodelling, did you not?

A. I included all charges that I find against the car.

Q. You made no allowance for cars that were actually rebuilt, or remodelled or reconstructed?

A. No, sir.

Q. You put them as ordinary repairs and charged the Pennsylvania line with the percentage thereon?

A. Yes, sir.

Q. Will you be kind enough to take the two books, which involve the sixteen months inclusive of June, 1886, and show me what of those cars are charged against the Pennsylvania line; what mark distinguishes them, that I may see that fact for myself?

772 A. As to where rebuilding or remodelling comes in?

Q. No, as to which of those cars included in those two lists, are cars that you have charged as making mileage on the Pennsylvania system?

A. All the cars that have figures against them in any one month, have been in the system during this period.

Q. Are those figures included in the mileage of 20,599,754, charged against the Pennsylvania system, or in the total mileage of 30,343,729?

A. They must necessarily be included in both.

Q. What will enable me to discriminate as to the portion that is designated as the mileage on the Pennsylvania system?

A. That mileage is on other sheets.

Q. Be kind enough to let me see those other sheets.

A. They are grouped by months on these sheets. I produce the sheet showing the mileage of all the cars in the two books handed you made upon the Pennsylvania system during the first sixteen months referred to; I will produce the seventeenth month as soon as the clerk brings it in.

Q. Have you added up the number of cars that are credited to that mileage and charged with repairs on that list of seventeen months?

A. I have had it added up.

Q. Does this detailed list, or these detailed lists, just handed you by Mr. Burry, contain in any form that will show month after month as against each car its mileage?

A. That has been in existence and is just what I have been looking for, I have part of it here.

773 Mr. Burry: In answer to the call made for the contracts under which the complainant is operating its cars upon the Cincinnati, Hamilton and Dayton, the Cincinnati, Indianapolis, St. Louis and Chicago railroad and the Louisville, Cincinnati and Lexington railroad, I produce for examination the original of the cur-

rent contract with the Cincinnati, Hamilton and Dayton railroad. I produce the old contract assigned by the defendant to the complainant for the operation of sleeping cars upon the Cincinnati, Indianapolis, St. Louis and Chicago railroad, stating that is the only written contract we have with that road; we are still operating under the provisions of it with certain parol modifications, the only one of importance being that we no longer get any mileage.

As to the Louisville, Cincinnati and Lexington road I produce our current contract with the Louisville and Nashville railroad, which has now acquired control of, and is operating the Louisville, Cincinnati and Lexington railroad.

Mr. Johnson reads from the contract with the Cincinnati, Hamilton and Dayton R. R. Co., which he has just called for, and which has been produced, bearing date May 13, 1878, the following provisions:

"Seventh. The Pullman Company hereby agrees that it will keep the cars furnished under this contract in good order and repair, and will, from time to time, renew and improve the same, when necessary, at its own expense, and will keep said cars up to the average standard of the best and most approved sleeping cars run in the United States, excepting repairs and renewals provided for
774 in article sixth of this agreement, and such as are made necessary by accident or casualty, it being understood that the railway company shall repair all damages to said cars of every kind occasioned by accident or casualty during the continuance of this contract, except that the Pullman Company assumes all responsibility for any loss or damage occurring to said cars arising from defective heating apparatus or lights furnished by it.

"And the railway company agrees, as proper compensation for the maintenance of the running gear and bodies of said cars, that it will pay to the Pullman Company the sum of three cents per mile for every mile run by said cars upon the road of the railway company, or upon the roads of other companies by direction of the officers of the railway company, while in service under this contract, provided that said railway company is not to be held liable for any mileage on any Pullman cars between Richmond, Ind., and Chicago, Ill., over the Pittsburgh, Cincinnati & St. Louis railroad.

"And the railway company hereby agrees at all times, when requested by the Pullman Company, to make promptly such repairs to the cars furnished under this contract, as may from time to time become necessary, and to make, without request, such repairs as may be required to ensure their safety, rendering bills monthly to the Pullman Company for repairs to cars, and charging for the same only the actual cost of material and labor expended on such repairs, with an addition of ten (10) per cent. to cover general expenses. All settlements and payments for mileage and repairs to be made monthly between said companies.

775 "But it is hereby understood and agreed, that whenever the revenue from sales of seats and berths equals an average of $7,500 ($7,500) per car per annum upon the number of cars furnished under this contract, then, while such revenue shall continue,

the railway company shall not be required to pay mileage for any cars furnished under this contract, and the Pullman Company shall then bear the expense of all the repairs and improvements to said cars, except such repairs as are rendered necessary by accident or casualty, and such as are provided for in article sixth of this agreement, which shall be made by the railway company, as hereinbefore mentioned.

"Eleventh. The railway company hereby agrees that the Pullman Company shall have the exclusive right, for a term of fifteen years from the date hereof, to furnish, for the use of the railway company, sleeping cars on all the passenger trains of the railway company requiring sleeping cars, and over its entire line of railway, and on all roads which it controls, or may hereafter control, by ownership, lease or otherwise, and also on all passenger trains on which it may, by virtue of contracts or running arrangements with other roads, have the right to use such cars, and that it will not contract with any other party to run said class of cars on and over said lines of road during said period of fifteen years.

"Fifteenth. * * * And the railway company shall have the option and may elect to terminate this contract at the end of five years, or at the end of eight years, or at the end of eleven
776 years from its date, provided that in case the railway company shall elect to terminate it at any of the above-named periods, it shall give notice in writing to the Pullman Company of its intention to do so, at least six months before the day on which it may elect, as above stated, to have the agreement end; and provided, also, that in case this agreement is thus terminated prior to its expiration, at the election of the railway company, and not by reason of any default of the Pullman Company, then and in that case the railway company shall purchase the cars and equipments of the Pullman Company then in use, or assigned and accepted for use, upon its lines under this contract, or such interest therein as the railway company may not have previously acquired under the provisions of this contract, at the actual cash value of the same, which value shall, in default of mutual agreement, be fixed by arbitration; and in the event of such purchase the railway company shall have the right to use the same and all things connected with said cars, or as many cars, without charge for patent rights for the interior arrangements of the same, which may be owned or controlled by the Pullman Company."

Q. Tell me why it was that agreement having already been entered into that you charged against the defendant repairs at the rate of three cents per mile?

A. I put in the same figures as were in the affidavit really without much thought; had I proposed to make it up on the same basis as the Pennsylvania repairs I would not have had time to do it.

Q. Why did you put the repairs at all as a deduction; the agreement specifies that the repairs shall be done by the railroad company?

777 A. We were to do the repairs.

Q. They were to allow you three cents a mile?
A. Yes, sir.
Q. Was the allowance made to you by the railroad company?
A. There was no payment of mileage.
Q. Will you look and see what repairs you did on the cars on that railroad that you have not been compensated for?
A. It would take some time.

Mr. Burry says that the contract under which the Pullman Company is now running on the Cincinnati, Indianapolis, St. Louis and Chicago railroad is the old contract No. 10, attached to the lease by the Central Transportation Company to Pullman's Palace Car Company, except some verbal alterations, the only important one of which is, that the Pullman Company can collect no mileage, or that there is no mileage paid by the railroad company.

Q. Please make out a list of all repairs done by the Pullman Company on cars run on the C., H. and D. railroad, and qualify yourself to answer whether in any way, directly or indirectly the Pullman Company have been compensated for or reimbursed, or in any way received consideration for the same, and also do the same with respect to the C., I., St. L. and C., and also the L., C. and L. railroad.
A. I will do so.
Q. Do you have contracts with railway companies to which you furnish sleeping cars, they keeping the outside of the cars and trucks in order, and you being compensated by mileage, or in some other way?
778 A. They keep them in order or pay mileage.
Q. In what book do you keep the accounts of the credits received from such companies?
A. On the ledger.
Q. Do you have a ledger account with the different railroads?
A. Yes, sir.
Q. Let me see the account of the Cincinnati, Hamilton and Dayton railroad?
A. Here is the book and the account of the Cincinnati, Hamilton and Dayton is on page 474.
Q. Have you not an account on the books which will show the amount received by you from the railroad company or from some of the railroad companies for mileage, and also the amounts it cost you to keep the rolling stock on such railway in order?

(The witness refers the counsel to ledger T. 1, pages 292–'3.)

Q. It does not show the amount collected for repairs on a mileage basis?
A. It shows the mileage charged against all roads, but not the amount actually collected.
Q. Haven't you somewhere a statement or book which will show whether there was a profit or loss on the mileage in the matter of repairs, showing in contradistinction the amounts collected for re-

pairs on the mileage basis, and the amount paid out for the repairs of the cars on the roads which allow that mileage?

A. We have no such book.

Q. Haven't you a large credit somewhere on your book to
779 mileage of several hundred thousand dollars resulting from the collection for repairs on mileage basis in excess of the amounts paid out?

A. No, sir.

Q. Have you kept such an account?

A. No, sir.

Q. Did you ever keep such an account?

A. No, sir.

Q. Then, is there anywhere on your book, anything by which it can be seen whether the amount collected from mileage is in the excess of the amount expended by you?

A. No, sir.

Q. Then you could never tell from your books whether that had resulted in profit or loss?

A. No, sir.

Q. Or collections for repairs in any way or form?

A. No, sir.

Q. Then, it would be absolutely impossible for you from your books to determine whether the amount you have received in any way from the various railroads, or all the railroads, in the way of repairs allowance was in excess of or less than the amount expended?

A. It would not be absolutely impossible; it would be a hugh piece of work.

Q. Would take many days to make such a calculation?

A. Yes, sir.

Q. And the thing itself is not shown?

A. No, sir.

Q. Look at your ledger and see whether there is any credit
780 for any amount received from the Cincinnati, Indianapolis, St. Louis and Chicago railroad for repairs of cars by way of mileage or otherwise?

A. We received $174.90 for mileage charged in February.

Q. Prior to February, 1885, then mileage for repairs was being collected regularly from that railroad, was it?

A. I would require to go back and examine.

Q. Go back for a year at any rate; the ledger lying open before you. Commence with February, 1884, and give the mileage collected down to and including February, 1885.

A. February, 1884, was collected $187.62 for mileage in December, 1883; in March we collected nothing. April, 1884, $198; it would indicate that was January mileage.

Q. Would it be easier for you to call for charges against these railroads for amounts due by them on mileage and repairs account in the months in which the charge is made?

A. No, it would not.

Q. Then proceed.

A. In April, 1884, was paid $127.50 for February mileage; in May, 1884, was paid $211.20 for March mileage; in July, 1884, was paid $198 for April, 1884, mileage; and $277.80 for May, 1884, mileage; in July, 1884, was collected $201.30 for June, 1884, mileage; in September, 1884, was collected an item of $33.57 for May and June mileage, and $268.65 for July mileage; in August and October, 1884, there were no collections on account of mileage;
781 in November, 1884, was collected $204.60, August mileage; and July mileage, $58.50; in December, 1884, was collected $198, September, 1884, mileage, and $211.20, October, 1884, mileage; in January, 1885, was collected $198, November, 1884, mileage.

(Counsel for complainant objects to all the above testimony relating to accounts previous to 1st of February, 1885, and moves that the same be stricken out.)

(Mr. Johnson states the reason for this inquiry to be, he desires to see at what period of time the collection of mileage ceased, and whether it did not cease as soon as it became the interest of complainant not to collect it. He also wishes to see how accurately the charge has been made out against this railroad for repairs, by ascertaining how much said railroad was paying for repairs at the time it was liable therefor.)

Q. I wish you to continue to answer until we get all the collections for mileage charged down to and including February, 1885.

A. In Febuary, 1885, we collected $204.60, December, 1884, mileage; in March, 1885, was collected $204.60, January, 1885, mileage; in April, 1885, was collected $174.90, February, 1885, mileage.

Q. No further collections of mileage?

A. No, sir, if there was anything further it would only be trifling.

Q. Have you any suspicion of the reason for the cessation of this collection of mileage in February, 1885, contemporaneously with the new arrangement between the Pennsylvania Company and the Pullman Company?

782 A. I cannot speak from definite knowledge.

Q. Have you no information?

A. Not in my head now, I could get it.

Q. Please give me the details similar to that I have before me in the case of the L., C. & L., and of the Pennsylvania Railroad lines—the details of the Cincinnati, Indianapolis, St. Louis & Chicago allotment of receipts.

Adjourned to 2 p. m.

NOVEMBER 30, 1887.

Parties met pursuant to adjournment at 2 p. m.

Present: Same as before.

F. C. N. ROBERTSON on the stand.

Cross-examination continued by Mr. JOHNSON:

Q. I notice that the charges for repairs upon the mileage basis against the Cincinnati, Indianapolis, St. Louis and Chicago Rail-

road Company for the year ending February 1, 1885, were somewhere per month between $200 and $250, scarcely aggregating, as I remember, $3,000 per year. How is it that the charges that you make for the seventeen months ending the 1st of July, 1886, of repairs at five cents per mile running against the defendants amounts to $15,375.51?

(Objected to by complainant as irrelevant and not relating to any accounts of the period under investigation in this examination.)

A. In the first place, the figures given for mileage charge
783 are not for the same period as these repairs; consequently there is not necessarily a comparison.

Q. That is the first. Have you any other reasons?

A. I think that is a sufficient reason.

Q. There is no explanation occurs to you?

A. No, sir.

Q. Now, will you be kind enough to turn to your ledger L. U. 2, or first your ledger T. 2, page 472, headed "Cincinnati, Hamilton & Dayton Railroad Company," and your ledger L. U. T., similarly headed on page 474, and tell me what is the meaning of the charges month after month, commencing August, 1884, and ending July 1, 1886, of mileage. These amounts of mileage never falling below $667, and sometimes running up to $1,200, and are charged against that railroad.

(So much of this question as relates to any period preceding February 1, 1885, objected to by complainant's counsel as irrelevant.)

A. The meaning of the charge is, on the face, a charge for mileage against them for repairs to be made by this company.

Q. On your books, therefore, the Cincinnati, Hamilton and Dayton Railroad Company stand debtor to the Pullman Palace Car Company for amounts of repairs on the mileage basis. Is not that so?

A. They stand debtor for mileage charged.

Q. The charge being in every way similar to charges made against the Cincinnati, Indianapolis, St. Louis and Chicago Railroad Company anterior to February, 1886; is not that so?

A. Yes, sir.

784 Q. Have you any explanation to offer of the fact of your charging that company with repairs on the milage basis during that whole period, if it was not indebted to you?

A. I do not know the fact that they were not indebted to us.

Q. I now turn to the paper which has been handed me as showing the manner in which you arrived at the credit to the defendants of a portion of the gross earnings for the seventeen months ending the 1st of July, 1886, this credit being for $13,658.45, the amount calculated for mileage $7,720.26 being added, making the total credit of $21,378.71. Will you be kind enough to tell me, or after I read the memorandum, to answer the question I put concerning it; seventeen months, ending June 30, 1886?

Number and name of line.	Cars required, adding 25%.	Gross earnings.	Proportion of L., C. & L. mileage.	Proportion of earnings made on L., C. & L., based on mileage.
506 Cincinnati & New Orleans	8	$89,487 25	115-923	$11,149 55
513 Cincinnati & Jacksonville	6	21,903 75	115-1004	2,508 90
Total	14	$111,391 00		$13,658 45
L., C. & L. proportion of cars	3			

Will you tell me why it is that out of a total of fourteen cars you charge against the defendants for the L., C. and L. proportion, three, whilst you credited it with only from one-eighth to one-ninth of the total receipts earned by those fourteen cars?

A. The information given on that statement, Mr. Johnson, is rather out of my line, it was prepared by another gentleman.

Q. Do you know why it is that the repairs account on a
785 three cents per mile basis is collected at the rate of $7,720.26, whilst the receipts are but $13,658.45, making the three cents per mile amount to more than half the gross earnings?

A. I can simply reply that the repairs are an estimate.

Q. Is there no detail of the footings which are shown on the paper I now hold in my hand, called "statement showing gross earnings of sleeping cars on lines running over Cincinnati, Hamilton and Dayton railroad, and connections;" if there is such detail, please let me have it?

A. I would suggest that questions with relation to that paper be made to Mr. Bird, I am not thoroughly familiar with the details of his office. I would add that I can ascertain and produce such figures if they are in existence.

Q. If you can find them now, please do so?

A. Yes, sir.

Q. Please follow me whilst I read off these figures, the charges of mileage against the Cincinnati, Hamilton and Dayton:

February 28, 1885	Mileage	573 72
March 31, 1885	Mileage	923 46
April 30, 1885	Mileage	707 46
May 31, 1885	Mileage	731 94
June 30, 1885	Mileage	728 64
June 31, 1885	Mileage	1,137 78
August 31, 1885	Mileage	1,252 32
September 30, 1885	Mileage	1,186 29
October 21, 1885	Mileage	912 96
November 30, 1885	Mileage	717 36
December 31, 1885	Mileage	744 00
January 31, 1886	Mileage of W. cars	725 88

786 I supplement the balance of the seventeen months as follows:

February 28, 1886	Mileage	667 38
March 31, 1886	Mileage	744
April 30, 1886	Mileage	724 20
May 31, 1886	Mileage	765 57
June 30, 1886	Mileage	743 10

Now, will you tell me how it is that such an aggregate of mileage on the basis of three cents per mile was larger, when the total gross earnings which you have allotted for the Cincinnati, Hamilton and Dayton Railroad Company earnings during that period, is $32,785.27 only?

A. The mileage you find in the ledger which you have just read off, is, I believe, charged on more territory than is concerned in this statement.

Q. Did not you give us the credit in the gross earnings for all the territory of the Cincinnati, Hamilton and Dayton Railroad Company?

A. I think not.

Q. What territory do you think you excluded from the credit to us of gross earnings?

A. I should have to ask Mr. Bird.

Q. Could you tell by reference to the original memoranda?

A. Lines concerned in this statement are only Chicago and Cincinnati via L. N. A. & C. and Cincinnati and Detroit.

Q. Which lines did you exclude that are operated and controlled by the Cincinnati, Hamilton and Dayton Railroad Company?

A. I should have to get that information from Mr. Bird.

Q. Will no papers show you that?

787 A. There are papers in Mr. Bird's office. The reason of my answering that I cannot, is, because I have not got the information in my head, but it is in the office. That part of the information you must derive from Mr. Bird, who helped me make this calculation. I am not familiar with the lines, therefore, I am careful in what I say.

Q. May I ask you to look at the contract between the Louisville and Nashville Railroad Company and the Pullman Palace Car Company, and see if the provisions therein contained about repairs of cars and the other matter which I read from the Cincinnati, Hamilton and Dayton contract, are not substantially contained in this contract?

A. I believe I can say they are substantially the same.

Q. Then in all these three calculations of the three railroads outside of the Pennsylvania lines we have been considering, all calculations resting on mileage, whether they are charges for repairs or the proper allowance of credits for gross receipts, are derived from Mr. Bird, and are not matters which you are personally familiar with?

A. Yes, sir.

Q. Am I right in interpreting the statement of the Cincinnati,

Hamilton and Dayton railroad to mean, that there are but three cars actually running on the line, and that you have added one car to cover shoppage and extra service?

A. That also is a matter with which Mr. Bird is entirely familiar and I am not.

788 Q. Look, please, at the charge for mileage under date of February 28, 1885, against the Cincinnati, Hamilton and Dayton Railroad Company of $573.72; note the journal page and turn to it. Please read the journal entry from the journal which you have produced under my call?

A. "Sundries to mileage of wild cars for February, 1885, mileage bills as follows: Cincinnati, Hamilton & Dayton Railroad Company, $573.72," and other roads.

Q. You have picked only one out of a large number of roads?

A. Yes, sir.

Q. In this connection, though somewhat out of its order, please tell me whether you collected mileage from the Cumberland Valley railroad?

A. In that period?

Q. During the year after the first of January, 1885.

(Objected to by counsel for complainant on the ground that it covers a period not embraced in this investigation.)

Q. Call off the items of charge, will you, from that time?

A. I find on the ledger, page 484, under the heading "Cumberland Valley Railroad Company," the following charges:

January 31, 1885	Mileage	277 50
February 28, 1885	Mileage	253 08
March 31, 1885	Mileage	290 82
April 30, 1885	Mileage	266 40
May 31, 1885	Mileage	281 94
June 30, 1885	Mileage	275 28
July 31, 1885	Mileage	280 74
August 31, 1885	Mileage	226 44
September 30, 1885	Mileage	142 08

789 Q. And no later charge of mileage, is there?

A. Not in October or November or up to May, inclusive, 1886, or in June or July.

Q. What is the meaning of the charge: "1886, May 11, to cash, $2,019;" will you please turn to that journal entry?

A. For refund of mileage paid by Cumberland Valley Railroad Company, as follows:

Voucher 9052.

Mileage February, 1885	253 08
Mileage March, 1885	281 94
Mileage April, 1885	266 40
Mileage May, 1885	275 28
Mileage June, 1885	270 84
Mileage July, 1885	282 96

Mileage August, 1885, balance March, May, July.....	17 76
Mileage August, 1885	226 44
Mileage September, 1885	144 30
	2,019 00

Q. Will you tell me the circumstances under which that refund was made?

A. I don't know the reason at this moment; I will find out.

Q. Will you show me wherein in the detailed statement that you have made out of gross earnings of the Pennsylvania lines you have credited us with the Cumberland Valley Railroad receipts?

A. Mr. Bird is a better one to answer that.

Q. Will you turn again to the journal charges which you read from, where the Cumberland Valley railroad was entered and
790 where this last credit of February, 1885, was given to the Cincinnati, Hamilton and Dayton. I see on that same journal, page 177, "Pennsylvania railroad, main line. Sundry roads $96. Pittsburgh, Fort Wayne and Chicago railway, $262.44." Were those mileage charges made against those two railways?

A. Yes, sir.

Q. Now, will you please turn to the ledger entry page 626 of the Pittsburgh, Fort Wayne and Chicago, and page 613 of the Pittsburgh Railroad charges; first page 626 of the Pittsburgh, Fort Wayne and Chicago, and say whether there are not charges against those companies of mileage.

A. Here is the account charging the Pittsburgh, Fort Wayne and Chicago railway with $262.44, February, 1885, for mileage. There are, I am informed, three small lines in the Pennsylvania system on which mileage is collected by the Pullman Palace Car Company, which have been credited in the gross receipts to the Pennsylvania system, and these charges relate to those lines.

Q. Now, please show me the data that exhibit 192 cars as chargeable to the Pennsylvania lines?

A. I would refer to Mr. Bird for that information.

Q. I wish you would get it.

A. I cannot find those statements, but Mr. Bird can give you full information about that, it is a subject with which he is familiar, how made up.

Q. Do you know anything at all about the principle upon which this was made up, not the details but the principle?

A. Not sufficient to allow me to trust myself in trying to
791 explain it; I have never paid very much attention to Mr. Bird's office, the details of it.

Q. That statement that lies in front of you with the miles run, the details of that mileage are in the monthly detail papers that lie before me?

A. That is the details of the Pennsylvania lines?

Q. I mean the Pennsylvania lines.

A. Yes, sir.

Q. I notice more than 192 cars on these different monthly lists,

but you are unable to give me any satisfactory information how that amount was charged for at less than 192 cars?

A. How, what amount was charged for?

Q. The amount of the mileage, the amount of the mileage run was charged against us on a basis of less than 192 cars, when the monthly details show more than 192?

A. The reason of that is this: It is the actual total mileage made on the Pennsylvania system that is taken; it is immaterial what number of cars; there are no doubt more cars, as you say, than 192 made the service.

Q. Did you get at the cars then in this way: By taking the total miles run in the division and say, as the total miles run in the division is to the number of miles run shown on the statement chargeable to the Pennsylvania lines, so is the total number of cars used on the Central division to the total number of cars on the Pennsylvania lines?

A. No, sir; that would be an impossible basis. As I said, Mr. Bird can fully explain that matter to you. I don't feel competent to do it.

792 Q. Have you got the details of the gross earnings, how you made up the gross earnings which you credit the Pennsylvania lines?

A. I can get that from Mr. Bird.

Q. I wish you would get that book. Will you explain again why and how you add some $35,000 to the proportion of repairs charged against the Pennsylvania lines, $401,538.67?

A. Why we did so was because of the almost impracti-bility of getting at the actual repairs on those thirty-five cars, and how we did it was by means of an approximate estimate.

Q. What was done with those thirty-five cars after they were repaired? They were parlor cars, weren't they?

A. Parlor cars.

Q. Were they put back again upon the Pennsylvania line?

A. Not necessarily.

Q. But were they, in fact?

A. I cannot tell you about that, from my knowledge at present.

Mr. BURRY: I will state that those thirty-five cars were not returned to the Pennsylvania lines after being repaired.

Mr. JOHNSON:

Q. Will you find out when *three* repairs were done?

A. Yes, sir.

Q. Then your testimony yesterday was substantially to this effect: that some $80,000 was allowed by the Pennsylvania railroad for the repair of those cars; they were extensively remodeled and

793 turned into a combined car, partly parlor and partly sleeper, and the cost of the repairing and remodeling them was more than $80,000, amounting to something like $147,000. You charged against the Pennsylvania Railroad line, in addition to the $80,000 which was allowed by the Pennsylvania railroad, some $35,000 or $36,000?

A. Not in addition to the $80,000.

Q. Didn't you receive $80,000?

A. Yes, sir; but that is not charged in the repairs.

Q. No; but, in addition to the $80,000, you charged——

Q. Question read as follows: Then your testimony yesterday was substantially to this effect: That some $80,000 was allowed by the Pennsylvania railroad for the repair of those cars; they were extensively remodeled and turned into a combined *par*, partly parlor and partly sleeper, and the cost of repairing and remodeling them was more than $80,000, amounting to something like $147,000 you charged against the Pennsylvania Railroad line in addition to the $80,000 which was allowed by the Pennsylvania railroad, some $35,000 or $36,000?

A. I did not charge against the Pennsylvania line $80,000.

Q. I did not say you did; I said, in addition to the $80,000 allowed by the Pennsylvania railroad, you charged against the Pennsylvania line $35,000 or $36,000, that is the question.

A. It seems to me—I may be wrong—that the meaning of that, "in addition to the $80,000 allowed," then charged $35,000 more.

794 Q. Yes. If you succeed in collecting from us $35,000, won't you receive on account of those cars, $115,000?

A. Not at all; I have not charged the $80,000, which we get from the Pennsylvania Company, against the repairs.

Q. How much, if you succeed in collecting from us $35,000 or $36,000, will you have received on account of the remodeling of those cars, in all?

A. I don't clearly follow you.

Q. Haven't you received $80,000 on that account?

A. We have not received it all, but that was the fund that was provided.

Q. You are to receive it, it is set off on that basis?

A. Yes, sir.

Q. You get that much on that account?

A. Yes, sir.

Q. If you collect from the Central Transportation Company, or allow this credit of $35,000 or $36,000, won't you have received that much more?

A. I don't understand that is a matter of collection at all from the Central Transportation Company.

Q. It is a matter of a charge in an account against them?

A. No, sir; it is a totally different thing, it seems to me.

Q. Suppose that the amount of the net revenue was $264,000, and you succeeded in establishing this charge of $36,000, do you mean to say that would not come directly out of the Central Transportation Company's pocket.

795 A. I don't know. If you will allow me to explain I think I can explain it. I may not clearly see the point you are making, but I think I understand the matter. Your question asked me, if in addition to the $80,000 we charged $35,000. I say

we did not charge the $80,000, therefore the $35,000 cannot be in addition to it, to the Pennsylvania lines.

Q. I did not use the word "charge" in connection with $80,000.

A. I so understood it.

Q. I used the word "allowed."

A. You said "in addition to the $80,000 allowed "——

Q. You charged in making up this account against the Central Transportation Company $35,000 or $36,000 more?

A. The inference is then from that that the $80,000 would go into this statement, whereas it does not.

Q. I mean to say, if you succeed in maintaining this credit of $35,000 or $36,000 against the gross earnings, for which you stand debtor to the Central Transportation Company, how much in all will you have received by way of allowance on account of those cars?

A. My opinion is $80,000; I may be very stupid, but that is my opinion.

Q. Do you know about when those cars, about when the amount of $147,000 were paid for the remodeling of those cars?

A. Between the months of February, 1885, and June, 1886, inclusive.

796 Q. You said the other day it was not all paid at the end of the seventeen months?

A. Was not all paid?

Q. The repairs were not all made at the end of the seventeen months.

A. This amount you spoke of as charged, $145,000, I say in that are certain repairs, just how much I am not at this moment able to say; it is a matter of examination by an expert, mechanical expert to ascertain just what repairs are there.

Q. Did not you say yesterday, that the whole of the $145,000 or $147,000 of repairs had not been completed on the 30th day of June, 1886?

A. No, sir.

Q. You did not say that?

A. If I did, I said what I did not intend to say.

Q. Will you turn to the figures that will show me during what period you paid that $145,000 or $147,000?

A. I can show you, as Mr. Burry says, the statement.

Q. That is just exactly what I want. Have you got any memoranda showing the times of service upon the Pennsylvania railroad of the cars, the repairs of which you have charged against us to that extent stated during the seventeen months?

A. I have. On the paper produced the red ink shows the date of last service. The right-hand red-ink column shows the last day of service; the left-hand red-ink column shows the date when sent to shop and the black carrying out in ink show the total amount expended in repairs during that period.

797 Q. Up to what time did the Pennsylvania railroad allow you for repairing those cars. Up to the time of their withdrawal from the service?

A. They were appraised, I take it on the day of the withdrawal, from the maintenance basis.

Q. They remained on the maintenance basis with the Pennsylvania railroad until the time of their actual withdrawal?

A. No, sir.

Q. On what basis did they remain?

A. Under the basis of the new contract.

Q. But the new contract did not apply to that, the new contract expressly excluded parlor cars. I see it is said here "Credit by amount agreed to be paid by Pennsylvania and leased lines, in lieu of repairs on above cars when withdrawn from assignment." On what basis were those parlor cars, which were not covered by the new contract, which expressly excluded running on the Pennsylvania lines on the basis of maintenance?

A. That is a question which is more properly answerable by the operating department.

Mr. BURRY: Answer it if you can.

A. To the best of my knowledge under the new contract, on the same terms with the new contract.

Q. The new Pennsylvania contract?

A. Pennsylvania contract.

Q. On the basis, to your knowledge under the terms of the new Pennsylvania contract?

A. Yes, sir.

Mr. JOHNSON:

Q. I see on this list you have marked "Juno, last service on Pennsylvania railroad, March 18, 1885." Won't you be kind
798 enough to turn to this book of mileage for thirteen months, commencing with the month of February, 1885, and ending with February, 1886, and show me where the Juno 149 is credited with any mileage during that period?

A. I cannot find that it made any mileage, and I cannot explain exactly just why; she was apparently in service until March 8th; I don't know the circumstances. Mr. Bird can probably explain about that fully.

Q. I see that you have included in the list of thirty-five cars the Raritan No. 222, and I find that she made in all the service of the Pennsylvania railroad, subsequently to the new lease, 534 miles; is that not so?

A. February 4, 1885; four days.

Q. On what basis of credit of gross earnings did you credit us with gross earnings of the Raritan during that period?

A. That is a detail which Mr. Bird will have to explain.

Q. How did you get at the proportion of gross earnings which you credited to the Pennsylvania lines in the statement that we have before us, viz: $1,471,312.25?

A. That, also, Mr. Bird can explain fully.

Q. There must be a detail somewhere showing those gross earnings; let me see that?

A. That will be in Mr. Bird's possession.

Q. Do you know nothing at all of the principle upon which those earnings were divided, whether the actual receipts from the different lines of the Pennsylvania system were given, or whether it was a prorating on the basis of mileage?

799 A. I know so little about the way in which Mr. Bird has made up this statement and makes up his statements, relying on him always for them, that I do not feel justified in trying to answer questions about them; I am not familiar with them.

Q. I see that in the list you have produced of Pennsylvania railroad parlor-car repairs, outside of repairs of from $5,000 to $10,000, which, I take it, were for remodeling, the only repairs of amounts in any one case less than $1,000, were as follows:

149	Juno	$346 00
160	Vesta	369 65
203	Western	513 72
213	Apollo	357 30
214	Newport	317 11
218	Adirondack	365 29
219	Neptune	381 74
221	Passaic	363 83
223	Delaware	334 45
224	Lehigh	242 56
225	Schuylkill	359 25
226	Brandywine	247 86
240	Cape May	396 19
242	Rockaway	350 74

May I take it that the items, the large items which I have not counted, were in each case items of expenditure for the remodeling of the car against which the amount is carried?

A. No, sir; not at all; there is more or less repairs in every item.

Q. Do those items include separate shoppings, when something was paid for repair and something was paid for remodeling,

800 or do those items in each case include the charge paid out when shopped?

A. Generally speaking.

Q. I am excluding the small items I have read.

A. Generally speaking, I should say that each large item was one shopping, and includes all the charges for repairs and remodeling.

Q. And in each of those cases where there was such a charge, it was for a remodeling, and everything else that was done at that time, but in each case there was a remodeling and changing of the car into a car of a different character?

A. I cannot speak definitely as to that.

Q. Is not that your best judgment?

A. It is my best judgment; yes, sir.

Q. Do you remember when the West Shore parlor cars were put upon the Pennsylvania line?

A. No, sir.

Q. Do you know anything about which of the cars included in these lists are the West Shore cars?

A. Not without inquiring.

Q. Have you charged in the repairs against the Central Transportation Company, the West Shore car repairs during the seventeen months. Parlor-car repairs, I am confining myself to the parlor cars?

A. If such cars are included in the Pennsylvania mileage, then there is a charge for it.

Q. Can you tell me by looking at the list, whether those cars are included in that list?

A. I cannot, sir, because I do not know the cars; Mr. Bird can tell.

801 Q. You know of no exclusion of any cars that were used on the Pennsylvania Railroad lines, from the repair account, as charged against the Central Transportation Company, do you?

A. I do not.

Q. What lines were included in the making of the thirty million and odd of mileage on this list, outside of the Pennsylvania lines; may I assist you by handing you your list "Schedule lines, No. 100," of July 5, 1887?

A. That is Mr. Bird's business entirely, I am not familiar with it.

Q. Do you in your office, keep any book or keep any memoranda showing the gross earning- of the various divisions for your fiscal year, and the gross operating expenses and gross maintenance, expenses, and the percentage which each of those items of expense and the aggregate of expense, bear to the gross earnings?

A. We do.

Q. Please produce them for the three years ending July 31, 1885, July 31, 1886, and July 31, 1887; do you not also have the same information in monthly sheets?

A. Yes, sir.

Q. My call will go for the yearly and the monthly sheets?

(Counsel for complainant object to any questions relating to or calls for papers relating to any divisions or territories which are not included within the scope of the present examination, and in which are not situate any one of the following railroads: The Penn-
802 sylvania Railroad system; Cincinnati, Hamilton and Dayton railroad; the Cincinnati, Indianapolis, St. Louis and Chicago road, and the Louisville, Cincinnati and Lexington railroad.

Counsel further object to any questions relating to or calls for papers relating to any period subsequent to the 30th June, 1886, inasmuch as the fiscal year of complainant includes July. On account of convenience of statement, we will not object to the witness producing such a statement as is called for on the lines under consideration, including July, 1886; but at the same time we protest that any figures concerning July, 1886, are immaterial and irrelevant to the present investigation.

We object particularly to the witness producing any statement or memoranda relating to the year ending with July, 1887, for the reasons given above.)

Mr. BURRY: If you have anything that answers that description, please produce them and let me see them, beginning with the Central division for the year ending July 1, 1886?

The WITNESS: They are not separate.

Mr. JOHNSON:

Q. Tell me, returning to this subject of parlor-car repairs, whether any of the repairs charged were done before the withdrawal of the car which was repaired, finally from the Pennsylvania Railroad service?

A. Any of these repairs or repairs charged?

Q. Any of the repairs there?

803 A. I will have to get the details and the dates.

Q. (Previous question read as follows:) Do you, in your office, keep any book or keep any memoranda showing the gross earnings of the various divisions for your fiscal year, and the gross operating expenses and gross maintenance expenses and the percentage which each of those items of expense and the aggregate of expense bear to the gross earnings?

A. We do.

Q. Please produce them for the three years ending July 31, 1885, July 31, 1886, and July 31, 1887.

A. I have not got exactly what you described, but I have statements showing the gross earnings by divisions, the total operating expenses and the maintenance expenses, and showing the percentage of total operating expense on the one hand and gross expense on the other hand to gross earnings. The inaccuracy included the percentage of maintenance to gross earnings. With this explanation I produce book marked "Statement 3, P. P. C. Co.," and refer you to pages therein numbered as follows: Page 136 for August, 1884; page 142 for September, 1884; page 145 for October, 1884; page 148 for November, 1884; page 151 for December, 1884; page 154 for January, 1885; page 157 for February, 1885; page 160 for March, 1885; page 166 for April, 1885; page 169 for May, 1885; page 172 for June, 1885; page 175 for July, 1885. Turning to Book of Statements No. 4, P. P. C. Company, I refer you to page 1 for August, 1885; page 4 for September, 1885; page 8 for Octo-

804 ber, 1885; page 12 for November, 1885; page 16 for December, 1885; page 20 for January, 1886; page 24 for February, 1886; page 28 for March, 1886; page 32 for April, 1886; page 36 for May, 1886; page 40 for June, 1886.

Q. Won't you be kind enough to turn to the one that gives the monthly summary for the fiscal year ending July, 1885, and call out the page?

A. I also give page 178 of Book 3 above mentioned as a summary for the year ending July 31, 1885, by divisions.

Q. Now find the same thing for 1886?

A. I also give page 44 for July, 1886, and page 48 for the twelve months ending July 31, 1886.

(Counsel for complainant again call attention to their objection

that statements regarding the month of July, 1886, are only produced on account of convenience for the fiscal year ending with that month.)

Adjourned until 10 a. m. tomorrow.

THURSDAY, *the 1st Day of December, A. D.* 1887.

Present: Mr. Burry and Mr. Lincoln, for complainants; Mr. Johnson, for defendant.

The cross-examination of F. C. N. Robertson continued.

Parties met pursuant to adjournment at 10 a. m. December 1st.

The cross-examination of the witness was continued by Mr. Johnson as follows:

805 Q. Before looking at the book produced yesterday, will you be kind enough to say whether that book contained any other information throwing light upon the mode of running the Central division, or of the cars connected therewith, or of the profits or of the expenses of the same. The book referred to is the book containing a monthly and yearly summarization of the results and expenses?

A. It does contain other information.

Q. Please tell me what other information relative to the matter at issue it contains?

A. I do not know whether it is relative to the matter at issue.

Q. Relative to the question of the profits, the mode of earnings, the expenses, gross receipts of the Central division, its lines, its roads, its cars?

A. There are other sheets that give more detail than the first sheet which you have looked at.

Q. Nothing more?

A. Nothing more; merely goes into further details.

Q. Does the book contain anything other than such information in detail?

A. With regard to the Central division? No, sir.

Q. So that I may take it, that book contains nothing other than information summarized, or in detail, concerning the administration of the Central division, other divisions being immediately involved by their immediate juxtaposition on the same page with the Central division?

A. Yes, sir.

(Mr. Johnson asks to be allowed to examine the whole book.)

(Objected to by counsel for complainant on the ground that
806 it is immaterial, and because they do not feel it is proper to disclose matters which do not relate to the questions at issue, but do relate to the other business of the Pullman Company.)

(Mr. Johnson states, the witness says, except being inexplicably interwoven with the other divisions, these books contain nothing but information concerning the Central-division operations.)

(Objection withdrawn to examining statement up to and including July, 1886.)

Mr. BURRY: The pages from Statement Books 3 and 4, offered in response to the call last evening, show a statement of the gross earnings and expenses on all the divisions by months, do they not?

A. Yes, sir.

Q. The succeeding page to each of those enumerated show the same thing in regard to cars, do they not?

A. Yes, sir.

Q. The second succeeding page to each of these offered in response to the call yesterday, contains a comparative statement between the months then under consideration, and the corresponding one of the preceding year, does it not?

Mr. BURRY: In answer to the further call of Mr. Johnson this morning, I produce pages 136 to 180, inclusive (the latter being the last page in the book), of Statement Book 3, and pages 1 to 50, inclusive, of Statement Book 4.

Q. The pages I produce begin with August 1, 1884, do they not?

A. Yes, sir.

807 Q. And end with July 31, 1886, do they not?

A. Yes, sir.

Q. And are the pages in these two books that relate to that period of time?

A. Yes, sir.

Q. The preceding pages of the book relate to anterior periods of time?

A. Yes, sir.

Q. And the succeeding pages of the book relate to succeeding periods of time?

A. Yes. sir.

Mr. JOHNSON: On page 178 of Book 3, I find the heading: "Pullman Palace Car Company, statement of gross earnings and expenses of each division in detail, for twelve months, ending July 31, 1885," which I will read as it was originally written in ink, so far as concerns the Central division, as follows:

E. H. G. 287.

Central division.

Number of cars operated, 287, 247.

Gross earnings	$1,581,636 74
Expenses—Proportion of administration expenses	51,951 42
Division salaries	
" expenses	42,259 24
District salaries	69,510 10
" expenses	13,875 94
Conductors	133,474 77
Porters	47,091 09
Car-cleaners	48,424 39
Washing	40,220 65
Supplies	7,964 20
Total operating expenses	454,771 80

808 Maintenance of upholstery of seats and backs and minor betterments and repairs of cars.	21,801 60
Maintenance of equipment	81,719 38
Gross expenses	558,292 78
Total net earnings	1,023,343 96
Per car of 287 cars, say (as per E. H. G.)	5,510 90
Gross earnings per car	6,403 39
" expenses "	2,260 29
Net earnings per car	4,143 10
Percentage of operating expenses to gross earnings	28_{100}^{75}
Percentage of gross expenses to gross earnings	35_{100}^{30}
Percentage of operating expenses to gross earnings, year ending 31st July, 1884	28_{100}^{05}
Percentage of gross expenses to gross earnings, year ending 31st July, 1884	33_{100}^{95}

Q. I find for the Central division, on this page, as originally extended, the gross earnings for the year were extended at $1,581,636.74; then is given the detail of charges, proportion of office expenses, division salaries, division expenses, district salaries, district expenses, conductors, porters, car-cleaners, washing, supplies. The proportion of office expenses in the first column is entirely exclusive of any office expenses of division or district expenses?

A. Yes, sir.

Q. And is purely the general office expenses, including salaries of president and the officials at the home office?

809 A. Yes, sir.

Q. Car-cleaners and washing have items extended opposite them. How is the credit given for what is received from the railroad company on that account? Is it given by making the amount carried out there less than the original amount paid, by the amount received, or is the credit given in some other way? Take, for instance, the Pennsylvania railroad, which, under its contract, allows $1,500 a month; will that allowance be represented in a deduction from a larger sum, leaving the difference extended, or will it be otherwise shown?

A. I would like to refresh my memory.

Q. You can do so in any way.

A. I find that the money received from the Pennsylvania railroad, for instance, on account of the cleaning of the cars, was credited to the clearing-house new account, as it is styled, to which all the expenses of such cleaning were charged.

Q. The result of that will be what, with reference to this item extended here of car-cleaners, to diminish it, or to leave the item as it stood in its original expenditure?

A. The item in its original expenditure did not appear there at all.

Q. This $48,000 car-cleaners is a grouping of all expenses made for car-cleaning, is it not?

A. Not all the expenses.

Q. The expense less the $18,000, or the proportion that you received from the Pennsylvania Company?

A. I will explain: All the expenses of cleaning the rail-
810 road portion of the Pennsylvania cars, cars on the Pennsylvania system, were charged to "clearing-house new account;" that didn't enter to these figures at all, and the $1,500 per month that we obtained on account of that was credited that account, and each month we estimated about what the cost would be over and above what we received, and that charge we estimated in the Central division.

Q. In point of fact, this is the net and not the gross of the car-cleaning charge?

A. Yes, sir.

Q. Then, I find the following items of deduction are entered on the page:

Total operating expenses	$454,771 80
Maintenance of upholstery of seats and backs, and minor betterments and repairs of cars.....	21,801 60
Maintenance of equipment	81,719 38
Making a total of gross expenses.....	$558,292 78
And total net earnings	$1,023,343 96

Q. Will you tell me how you separate in your repair account the maintenance of upholstery of seats and backs and minor betterments and repairs of cars, from the repairs to wheels, trucks and bodies of cars; the bills which you get from the shops or from railroad companies for repairs done for you upon your cars, how do you separate those bills into the two items of repairs which are included in the aggregate before me for seventeen months at $591,472.15, from the repairs to the inside of the car—repairs spoken of as maintenance of upholstery of seats and backs and minor betterments and repairs of cars?

811 A. The repairs included in that $591,000 would be all charged against the outside of the car and trucks, and against certain portions of the inside of the car. For instance, the walls of the car and lamps; and the maintenance charges would be, for instance, the plush on the seats and backs, upholstering, berth fronts and repairs of those, and things of that sort.

Q. What I want to get at is, what was your system when a bill came from the shop which included repairs of all sorts to a car; what was your system of separation of those items into these two elements; first, I want to know your system, and, then, I will ask you by reference to the books to illustrate the application?

(Witness now produces vouchers, showing in detail how the division was made.)

Q. Those items are charged according to the subdivision before me which subdivides them into those items?

A. Exactly.

Q. In charging the repairs making up the aggregate of $591,472.15,

what is added to the actual cost of the work, in the first instance, shop at ten per cent.?

A. Yes, sir; that ten per cent. is made on the actual cost, actual disbursements.

Q. The usual manufacturer's charge for the use of a fixed plant?

A. No, sir; not that ten per cent. simply an actual disbursement. There is one ten per cent. added to that.

Q. At the shop?

812 A. No, sir; not at the shop; they distribute an actual disbursement, part of it being a percentage of the general expenses which is a disbursement.

Q. It is the ordinary disbursement that the manufacturer who furnishes capital makes to himself by way of compensation?

A. No; it is quite different.

Q. How?

A. It is a distribution, a prorating of those expenses, actual disbursements which are not actual to the car, not specific to the car; for instance, clerical salaries, manager's salary, office expenses, and general labor.

Q. The use of a fixed plant?

A. Not at all; it is an actual disbursement.

Q. Your bill, in the first instance, is made up at the shop of the amount expended for labor, and amounts expended for material, is it not?

A. Yes, sir.

Q. That is added up, and to that ten per cent. is added?

A. Not necessarily.

Q. Is it not always in the case of repairs which go to make up the aggregate of $591,000?

A. The shop expense varies in different shops. It is an actual disbursement.

Q. Is there not added to the amount of labor expended and material ten per cent?

A. There is finally, not at the shops, unless that is the percentage of shop expenses.

Q. This aggregate then, the original cost of the material and labor, plus ten per cent., that is the bill as it comes to the Pullman main office from the shops?

A. No, sir; I wish to make that as distinct as possible.

813 That ten per cent. is not added at the shops.

Q. Where is it added?

A. Here at the general office.

Q. Then, after that, ten per cent. is added, is there not—ten per cent. added to that aggregate?

A. No, sir.

Q. Is there only one ten per cent. added?

A. Certainly. The actual labor and material is charged against the car, actual labor being the labor which is specifically expended on that car; there is, then, left certain other expenses which are not specific to the car which are mainly, the manager of the works' salary, and the clerical force at the works; stationery used at the

works, and all disbursements in connection with the works down there; the total of that is divided between the work of the month, the output of the labor and material for the month.

Q. Is it a fixed percentage?

A. Not always.

Q. What is its average for the last year or two?

A. I can't tell you; we have been charging a fixed percentage at Pullman, and we have been charging a varying percentage at Detroit.

Q. What is the fixed percentage at Pullman?

A. We have charged ten per cent. to new sleepers and foreign cars, except freight, and twelve per cent. to repairs.

Q. What is about the average at the other shops?

A. I can't say positively, probably not ten per cent.

814 Q. What is the total, the ten per cent. added to that?

A. When the bill reaches the general office, ten per cent. is added to that for the use of fixed capital.

Q. Therefore, $591,472.15 of repairs represents that manner of making up the bill?

A. Exactly.

Q. I find following up now the figures on page 78 there is carried out, or was originally carried out in ink, gross earnings per car, $6,403.39; gross expenses per car, $2,260.29, leaving net earnings per car, $4,143.10; percentage of operating expenses to gross earnings, 28.75; percentage of gross expenses to gross earnings, 35.30; percentage of operating expenses to gross earnings, year July 31, 1884, 28.05; percentage of gross expenses to gross earnings, year ending July 31, 1884, 33.95; I see from that that the percentage of gross expenses to gross earnings comparing the year ending July 31, 1884, with the year ending July 31, 1885, had increased 1.35 per cent., the difference between 33.95 and 35.30 per cent., so that the percentage of gross expenses on that division for that year was larger than for the preceding year.

A. The percentage was.

Q. I find that as it is written in your book in ink, and as it must have been originally because adding that number of cars in the Central division 247, to the number of cars extended to the other division, makes the aggregate 972 as carried out. As originally written the number of cars operated in that division was

815 247; above it is written in lead pencil "E. H. G. 287," and again repeated in lead pencil "287;" can you tell me in whose handwriting that lead-pencil writing is?

A. I cannot express a definite opinion as to that.

Q. Is it not a fact that 287 is the number of cars that you have included in your figuring in ascertaing the percentage; the number of cars to be included in the operations which have resulted in the mileage of 30,343,729?

A. Not that I am aware of.

Q. Is it not a fact in ascertaining the number of cars to be charged against the Pennsylvania railroad line in all those elaborate calculations of depreciation and capital invested and the like, you have

estimated the total number of cars at 287 employed in the Central division, and have charged the Pennsylvania system with that proportion of 287 which 30,343,729 miles bears to 20,599,754?

A. No, sir.

Q. Have the figures 287 figured not at all in any of your calculations in arriving at results?

A. They have not; I did not hear of them before.

Q. Now, I find also written in lead pencil above the line, "gross earnings per car," which, carried out in ink, is $6,403.39, and following lead pencil, "per car of 287 cars," say $5,510.90, as per "E. H. G.;" can you tell me in whose handwriting that is?

A. I looked at that at the same time, and I could not speak definitely about it.

Q. E. H. G. are the initials of your vice-president, E. H. Goodman?

A. Yes, sir.

816 Q. Now, do you not know at all how those figures got there?

A. I only saw them today.

Q. If there had been 287 cars operated in the Central division, the total of cars carried out, 972, would be incorrect, would it not?

A. Yes, sir; provided the other figures were all right.

Q. Do you remember upon the basis of 192 cars, stated to be the number of cars employed on the Pennsylvania, what the percentage of gross earnings per car was for the seventeen months ending June 30, 1886? The gross earnings for seventeen months on the Pennsylvania lines you have stated to be $1,471,312.25; reducing that to a year would make $1,038,572, would it not?

A. I have not worked it out; do you wish me to do it?

Q. I wish you would.

A. $1,038,570.

Q. Reduced to cars calculating 192 as the number, makes the gross earning per car how much?

A. $5,409.23.

Q. Giving credit for gross ernings per car upon the basis that has been adopted in the calculations which have been made, the gross earnings per car are $5,409, whilst your gross earnings for the Central division are carried out to the year ending July 31, 1885, are $6,403.38, or almost $1,000 more; is not that so?

A. Yes, sir.

Q. Which on 192 cars would make the trifling total of $192,000, within a fraction, would it not?

817 A. Yes, sir.

Q. What is this number of cars operated opposite the number of cars in the different divisions total 972? Would that mean the average number of cars in the division, including shop allowance?

A. No, sir.

Q. Does it mean the number of cars exclusive of shopping allowance?

A. Exclusive of shopping allowance. It is the number of cars

counted in that month as being operated for the average month; that is, the average number per month.

Q. The average number of cars actually run, exclusive of shopping allowance?

A. It was the average number of cars per month actually counted as operated during that month on our basis; during that period, rather.

Q. What is the shopping allowance?

A. It depends on the necessities of the line.

Q. The average allowance?

A. Twenty per cent.

Q. How is that made up, the statements of the cars that are operated during the month?

A. Those cars which earn $10, and over gross earnings, are counted during the month.

Q. These lists of statements in that form in the book before me, have been kept up in the Pullman office how long?

A. I cannot say how far they go back; they have been kept up during five years at all events.

Q. Haven't they been kept up much longer than that?

A. Probably, but I have not been in the company much longer than that.

818 Q. They were in use when you came in?

A. Yes, sir.

Q. Who was responsible for the correctness of the calculation made?

A. At this period or then?

Q. What general officer?

A. The auditor commonly.

Q. Therefore, it is a matter which has come under your supervision?

A. Yes, sir.

Q. The monthly statements show a considerable variation from month to month in the number of cars in the various divisions, do they not?

A. I believe so.

Q. And the yearly summarization shows the average of the twelve months?

A. Yes, sir.

Q. Is it not a fact from the manner in which the business is done one month, one division will have more cars, and the next month less, as to another division, and *vice versa?*

A. Yes, sir.

Q. According as there is greater or less demand in that division and cars from another division that can make the arrangement are drawn to supply the demand, or if the other divisions are short, cars are taken from the first division?

A. Yes, sir.

Q. The object being to economize the working of the whole system and make the fewest number of cars do the total business?

A. I presume that is so.

819 Q. I take the book before me, and turning to page 48 for the purpose of seeing how the account stands for the twelve months ending July 31, 1886, I find the total number of cars stated to operate during that twelve months at 976; I find the cars stated to have been operated in the Central division at 220; the gross earnings of that division, $1,414,405.05, a falling off in the gross earnings for that year of the difference between $1,581,636.74 and $1,414,405.05, or nearly $167,000, so that the operation of the year which ended July 31, 1886, produced gross earnings to that large extent less, is that so?

A. Yes, sir.

Q. I find the expenses subdivided as before:

Proportion of office expenses	$43,838 11
Division salaries and expenses	37,629 12
District salaries	55,448 01
District expenses	10,728 25
Conductors	99,554 63
Porters	42,963 30
Car-cleaners	56,481 64
Washing	33,551 81
Supplies	8,750 01
Total operating expenses	$388,944 88
As against total operating expenses the year before	$454,771 80
I find maintenance of upholstery of seats and backs and minor betterments and repairs of cars to amount to	41,742 85
Maintenance of equipment to amount to	85,282 76

820 Both those items considerably increased over the year ending July, 1885, though fewer cars were employed, that is so?

A. Yes, sir.

Q. I find gross expenses to amount to $515,970.49, that is, the gross expenses are about $43,000 less, whilst the gross earnings are less by the amount given a few moments since?

A. Yes, sir.

Q. I find total net earnings of the division to be $898,434.56 as against total net earnings of $1,023,343.96; I find gross earnings per car to be stated at $6,429.11; I find gross expenses per car to be $2,345.32; I find the net earnings per car to be $4,083.79; the percentage of operating expenses to gross earnings to be 27.49 per cent.; and percentage of gross expenses to gross earnings to be 36.48, that is correct, is it not?

A. Yes, sir.

Q. Your plan of including the number of cars, you told me a moment ago, is this, any car which earned anything at all in the line over how much during the month?

A. Ten dollars.

Q. Any car which earned as much as $10 in the month was counted?

A. Yes, sir.

Q. Therefore, if a car was in the line for a couple of days, in which time it could, of course, easily earn that much, and then was out of the line for the rest of the month, it would be counted as a car operated in that division?

A. During that month only.

821 Q. On page 50, in the comparison of the results of the twelve months, it appears that the percentage of gross expenses to gross earnings, for the year ending July 31, 1886, had increased on these divisions from 37.64 to 38.90 per cent.?

A. Yes, sir.

Q. There is no such comparison with the divisions for each twelve months?

A. No, sir.

Mr. Johnson asks that the witness will produce for his inspection the pages of the book which show the earnings of the Central division for the twelve months ending July 31, 1887.

(Counsel for complainant objects to the production of any books, statements, or accounts, relating to or covering the periods referred to in this last request of defendant's counsel, on the ground that any investigation or inquiry into such period is immaterial and irrelevant to the present investigation, and would result in an unnecessary and vexatious investigation into complainant's business.)

(Mr. Johnson asks if they object, and do not refuse to produce.)

The WITNESS: Under instructions of counsel, I will have to refuse to produce the books asked for by complainant's counsel, unless directed by competent authority to do so.

(Counsel for complainant here state that they do not intend to in any way hinder or delay any investigation of accounts or the taking of testimony material and relevant to the issues in this case. They believe the books asked for to be wholly irrelevant, but will

822 direct the witness to produce them if he is ordered by competent authority to do so; and, for the purpose of ascertaining the rights of the parties on this question, refer counsel to the case of *Ex parte* Judson, 3 Blatchford, 148, for the proper method of procedure, and state that they are willing to follow the mode of procedure there approved by the court.)

(Mr. Johnson says he is not at all familiar with the case referred to, but that he believes he understands the practice of the court to be that in case of a refusal by counsel to produce any book called for by the adverse party, and deemed by that adverse party to be material, there is no other mode to be pursued than to apply to the court for an order for its production, and for that order he will apply to the court having jurisdiction in this cause.)

(Mr. Johnson now asks that the witness will produce the pages of the book for the purpose of answering questions as to the amount of expenses and percentage of expenses of operating the Central division, and the number of cars operated in that division for the year ending July 31, 1887.)

(Under instructions of counsel for complainant, the witness makes the same answer to the above as to the preceding request.)

Q. Do you not have books, or statements, which show in detail the gross earnings of the various lines forming the Central division, this detail including, amongst other items, the mileage of the car, and its receipts from earnings?

823 A. I do not think that we have books showing the earnings by lines.

Q. Have you sheets of statements?

A. I am not sure.

Q. What is form 399? (Handing witness paper.)

A. Form 399 is a statement of gross earnings, etc., by lines.

Q. Please produce the books which show those gross earnings by lines.

A. For what date?

Q. Down to the 31st of July, 1886, in the first instance?

A. In answer to your question, I produce the first volume of the reports showing the matter you now ask for, for the fiscal year ending July 31, 1886; there are two other volumes required to fill the one year, which I will produce in a little while. I also produce like reports for the year ending July 31, 1885.

Adjourned to 2 p. m.

Q. Have you a book in which is entered the ages of all the cars employed in your company, all I care to see, is the ages of the cars which were employed in service on the Pennsylvania Railroad lines during the period ending July, 1886, and commencing February 1, 1885?

A. Not exactly in the way you put it; there is a book which gives the date of building the cars.

Q. Please produce it.

A. I have here a book showing the date on which all the cars of the Pullman Company were charged up in a ledger, and containing other information besides that. The date which appears is

824 the date charged, that is not necessarily the date of building; the cars, however, were built during the year which is represented as ending on the date charged, excepting some cases.

Q. I find in the book which you have furnished me on page 100, a list of cars headed "Central Transportation Company," in which is given all the cars mentioned in the first paragraph of Exhibit F of the bill, with the following remarks set opposite to them:

Car No. 13,	$7,394 15,	stored at Pullman.	
" " 14,	$7,394 15,	in Eastern division.	
" " 22,		stored at Altoona.	
" " 23,	$9,730 79,	"	"
" " 30,		"	"
" " 35,		"	"
" " 38,		"	"
" " 39,	$1,471 61,	"	"
" " 40,	$595 70,	"	"
" " 42,		"	"

Car No. 57,	$7,394 16,	in Eastern division.
" " 65 & 71,		stored at Altoona.
" " 86,	$1,066 89,	Central division.
" " 87 & 88,		stored at Altoona.
" " 89,	$382 96,	" "
" " 91,	$722 79,	in service stored at Pullman.
" " 93,		stored at Altoona.
" " 94,		" "
" " 95 & 96,		" "
" " 97,	$699 83,	" "
" " 98 & 100,		" "
" " 106,	Remodeled into hunting car Izaak Walton.	
" " 107,	Remodeled into hunting car Davy Crockett.	
" " 108,	$3,439 85,	stored at Pullman.
" " 109,	$3,439 86,	" "
" " 110,	$127 38,	stored at Altoona.
" " 111, 112 & 113,		" "
" " 114,	$472 30,	" "
" " 117 & 119,		" "
" " 82,		stored at Pullman.

825 Q. Can you explain the meaning of those figures, the dollars and cents which are there?

A. Not at the moment; I can ascertain.

Q. Please do so and give us the result later; also please have made between now and tomorrow an examination which will enable you to answer this question. Are the cars described in the second paragraph of Exhibit F of the bill commencing with No. 122, and ending with car Chili marked in your book under this date July 21, 1885, which is the same date of the entry concerning the Central Transportation Company cars, included in the list of property belonging to the Pullman Palace Car Company?

A. I will do so.

Q. Please also have made from the list of cars belonging to the Pullman Palace Car Company under date July 31, 1885, the date of charge of the various cars included in the list of cars against which repairs were charged during the seventeen months of the calculation which ended July 1, 1886?

A. I will do so.

Q. You were having a list made out of the dates when repairs were made on the thirty-five parlor cars?

A. Yes, sir.

Q. Has it been completed yet?

A. Yes, sir.

Q. Please produce it?

A. This paper will give the date the thirty-five parlor cars were in shop after January, 1885. Some twenty or twenty-one of these only received heavy repairs. There are others yet to be re-

826 paired to receive repairs which are included in that appraisement of $80,000. The whole amount of repairs that was

appraised at the time the cars were withdrawn, I believe, has not yet been expended. The work has not been done on them all during that period.

Q. Take the car Vesta, No. 150, which in your list is put down at $369.65, is it not a fact that in the repairs account included in the grand total of $591,000, the repairs to the Vesta have all been charged?

A. Not if my instructions were carried out.

Q. Let me turn you to the book which is the basis of the repairs charged, and ask you whether you do not find charged against the Vesta between February, 1885, and March, 1886, in one book $232.16, and in the other book in February, March and April $113 more?

A. I find that to be the case; that is about the amount.

Q. Now, do you think that in addition to those repairs there were other repairs done when that car was shopped between June 1 and June 13, 1885, as per list just handed me?

A. I am satisfied that must be the case.

Q. Please verify that by referring to your books.

A. I find that there are sundry small charges against the car Vesta from different sources, which have gone into the regular accounts, and it is quite possible, I should judge from that fact, it may be the case with some of the other cars; it looks to me as if the instructions I had given had been perhaps applied to our shop accounts only.

827 Q. Do you find any portion of the $369 included in this list against the Vesta; that is, outside of the charges which have been carried out in the account that has been made up?

A. Whatever figures are here are entirely outside of the figures charged in my first statement produced.

Q. The figures $368.65?

A. Yes, sir; whatever figures are in this list, taken from the special account, are entirely outside of the amounts included in the $591,000.

Q. See where you have charged under date June 1 and *31*, 1885, which are the dates you have given as the repairs that produced the bill $369.65?

A. I produce the shop book of the Pullman repair shop at Elmira, and refer you to the bottom of page 7 and part of page 8 as giving in detail the repairs put upon the car Vesta in June, 1885, which, with ten per cent. added for use of capital, makes the $369.65 shown as being part of the special account of repairs about these thirty-five cars.

Q. Is not a considerable part of the expense to which you refer for minor betterments and maintenance of inside cars, such as is comprised in the general description "maintenance of upholstery of seats and backs and minor betterments and repairs of cars," resilvering mirrors, for instance, $7.03; and replating trimmings, $33.48; what account does that belong to?

A. I take it that is correctly charged to repairs account.

Q. And not to maintenance of equipment?

A. Not necessarily; there are a lot of trimmings for cars that are not maintenance.

828 Q. What would the trimmings in the car be if they were not equipment or minor betterments?

A. Equipment is movables.

Q. How about trimmings?

A. Trimmings are not necessarily movables.

Q. What account would you call minor accounts; would you call that repairs of wheels, trucks and baggage cars?

A. There is a portion of the charges which a railroad would put upon a car on the inside.

Q. Let me ask you this: Do you think in that aggregate of $591,000 there are included many more such examples of repairs to wheels, axles and bodies of cars, as I see in the account you have produced of the Vesta, "mirrors, replating trimmings, resilvering mirrors"?

A. This is not included in that amount, and I do not think you will find much of any improper charges in that repair account.

Q. I ask you whether there are many examples of repairs of the character I have just particularized to other cars, included in that aggregate of $591,000?

A. I should say, no; though of course it would require examination to state specifically.

Q. Now, do you say, that properly those items, mirrors, replating trimmings, resilvering mirrors, all or any ought to be charged to the repairs account, of a character such as that account which aggregated $591,000?

A. I would like to get some information before answering that question, in regard to the car.

Q. I will take your answer as far as you know how it goes.

829 A. The answer to that question depends in a great many instances upon the car, and, therefore, I would like to ascertain about that first. Our shops are instructed as to what the proper distribution is, and we take it for granted that they have made it.

Q. "Leather, curtains," is another item included in that charge; is that a charge that properly belongs to repairs of wheels, trucks and bodies of cars?

A. It is curtain leathers.

Q. Is curtain leathers, or leathers curtain; is the item read backwards or forwards, upside down or inside out, properly included in the item repairs to wheels, trucks and bodies of cars?

A. It is difficult for me to answer that question explicitly until I first ascertain just what that article is; I am not familiar with all these articles.

Q. Have you not enough familiarity with the general business, to know that either leathers curtain, or curtain leathers, could not possibly be included in the item of repairs of the character of those repairs which are included in that aggregate of $591,000?

A. I have not, because all these matters require study; I don't know what a curtain leather is.

Q. Catches, deck sash and door holder; what item does that belong to?

A. I should say to repairs.

Q. You think that upon such an idea the account of repairs has been made up?

A. Yes, sir.

Q. Pedestals P. R. R., what does that mean?

A. That means, pedestals, Pennsylvania Railroad pattern.

830 Q. What does "pedestal" mean?

A. An attachment to the truck.

Q. Porcelain shades; is that an item that properly goes with repairs to the wheels, trucks and bodies of cars?

A. Yes, sir.

Q. What are the porcelain shades for?

A. For lamps.

Q. You think then, that in making out that repair account, or in having it made out under your instructions, that items like that have been included?

A. Yes, sir; that is an article which a railroad would pay us mileage for, or in maintaining a car, would do it at their own expense.

Q. The repairs on the porcelain shades for lamps?

A. Yes, sir.

Q. Did you ever in your life collect from the Pennsylvania railroad unless it was an accident which obliged them to pay—collect a bill on the basis they were obliged to pay for porcelain shades and lamps?

A. When it was a maintenance contract; yes, sir; I have no doubt of it.

Q. Black velvet, what particular part of the body, wheels and truck does that repair or replace?

A. That was seats and back; it did not go into the repair account, nor into this charge in the special account. Looking further I find curtain leather has really gone into equipment, and that satisfies me it is an article of equipment. I did not know it was that.

831 Questions of that sort cannot be answered off-hand. You have to know something about the cars and about the terms of the contract.

Q. Let me see the bill of the "Western," car No. 203, went into the shop May 21, 1885, and was out June 6, 1885, and also in July?

A. I produce the report of the Elmira Pullman car works, May, 1885, and refer you to part of pages 28 and 29, which contain an itemized statement of the repairs to car Western which you have called for; also to the report of the Elmira car works of June, 1885, page 1, where a further charge of a like nature is found against the same car; also the report of the Elmira car works for June, 1885, where another charge of like nature is found against the same car on page 22.

Q. Am I correct in saying that the items of the Western include the following bills from the Pullman shop at Elmira: One of $303.69; which with ten per cent., namely, $30.37 added, make

$334.06; that is for May. Another in June of $57.93, with ten per cent. added of $5.79, making $63.72, and another bill in July of $105.40, which with ten per cent. added make $115.94, and a total of $513.72?

A. Yes, sir.

Q. Now, clearly in those bills are included some items which are not repairs of wheels, trucks, or bodies of cars, is there not?

A. Yes, sir.

Q. And yet the total bill without any deductions therefor is carried out in this charge?

A. Yes, sir; in the special account, but in no case where there is such a distribution.

832 Q. Is it also included in the other repairs, or any other account, maintenance account, for instance, to which you refer?

A. It only appears there in the special account.

Q. In those items is thus included during the month of May, replating trimmings?

A. Yes, sir; which is undoubtedly correct as a charge against repairs. Where the trimmings are trimmings which will generally be found in first-class passenger cars, they are a proper charge against repairs.

Q. How about resilvering mirror—$9.75?

A. That depends on the kind of passenger cars in that line; if they would ordinarily have mirrors in those cars, that would be a charge against repairs.

Q. Upholstery, $8.57?

A. That is distributed to maintenance of seats, back and equipments.

Q. Why do you say that bill having been distributed as to the upholstery to the maintenance of seats and backs and equipments was not really carried out as to the portions thus distributed under those heads?

A. Because of the fact those figures are charged to this special account, they could not possibly, and as a matter of fact did not appear in any other account, and are not in the book at all.

Q. Let me see the account in which the bill of $513.72 was charged?

A. The ledger account?

Q. Yes, sir.

(Witness turns to ledger, page 336, headed "Pennsylvania
833 Railroad parlor-car repairs." The account commences on the debtor side, 1885, February 28th, and ends July 31, 1885. It foots up on the debtor side $32,531.15, and on the other side it is balanced by carrying forward to ledger C.)

The journal entry, page 283, is headed: "Pennsylvania parlor-car repairs," and contains details of repairs to cars 150, 203, 206, 207, 208, 209, 210, 211, 212, 213, 219, 223, 232, 233, 240 and 242. Footing up with the addition of ten per cent. $7,201.26, and including opposite No. 203, the item $57.93 before the ten per cent. was added. The balance of the entries for the following repairs at El-

mira in May, charged to the cars, now withdrawn from the Central division and charged as above. The items of charge against Nos. 203, 206, 212, 213, 220, 221, 223, 225 and 231, footing up with 10 per cent. added, $4,634.64, making in all a total of $11,835.90, and shows an item against No. 203, before the ten per cent. was added of $303.69.

On page 291, under date July, 1885, is the following entry: "Pennsylvania Railroad parlor-car reports, to C. & R. of cars for amounts expended at Elmira shops on the cars for labor and material during July as per shop statement on file, $1,827.47, 10 per cent. added, $182.75, making a total of $2,010.22."

Q. I understand you to say in addition to the repairs which appear in a special list, there is also included in the repairs account, making up the total $591,000 from time to time, other repairs against these cars?

834 A. Yes, sir.

Q. In the book which has been furnished me, giving the list of lines in detail for the two years, one ending July 31, 1885, and the other ending July 31, 1886, I find the heading of "commissaries" aggregating for the year ending July 31, 1885, $89,144.68, and for the year ending July 31, 1886, $131,414.20; that is the receipt from your hotel and buffet cars.

A. Yes, sir.

Q. Was any profit from that account carried to the credit of the Pennsylvania Railroad lines in making up that statement of gross earnings?

A. No, sir.

Q. Do you know whether that account resulted in a profit?

A. I should doubt it very much; I cannot say positively, I could ascertain.

Q. Please ascertain so you can answer tomorrow.

(Mr. Johnson calls for the book containing the earnings of the various lines belonging to the various railroad systems for the year ending July 31, 1887.)

(The same answer is made to this as to the other call relating to accounts in the same year, and the production refused, for the reasons there stated.)

Q. In making up the amount of gross earnings credited in the statement which has been prepared, did you credit all the earnings from the lines which began and ended on the Pennsylvania Railroad

835 system, and a share of earnings on a mileage *pro rata* basis as to those lines which began on the Pennsylvania Railroad systems, and ended on another, and *vice versa?*

A. That is not within my knowledge at the moment. I can answer from Mr. Bird. Adopting the information which Mr. Bird gives me, I reply they did.

Q. How did you divide the special item at the end of the year, 1886, July, of $35,714.25, and at the end of the year, 1885, July, of $36,102.79?

A. The answer to this question will be better given by Mr. Bird.

(Mr. Johnson says, he would prefer that Mr. Bird should answer it.)

Q. In the list which we are making out of the dates of service of the cars belonging to the Pullman Company which were included in the list of cars repaired to the extent in the aggregate of $591,000, please add a list of all such cars included in these repairs which belong, not to the Pullman Company, but to any associations leased by or partly owned as to capital stock by the Pullman Company, giving also, the date of commencement of service, or date charged of such cars. In making out the columns of dates of service of cars required from time to time, make a distinguishing mark where a car belongs to an association, giving the initials of the association?

A. I will do so.

Q. As I understand, in making up this list of repairs, every car which made any mileage upon the Central division, or upon that portion of it which was wholly Pennsylvania Railroad lines, or partly Pennsylvania Railroad lines was included?

836 A. That was the intention.

Q. About how long did it take, and about how many men, to make up the calculations which have been testified to by yourself in your examination-in-chief, I mean not merely to do the ultimate figuring, but to make the preliminary transcript and calculations?

A. Referring to the statements put in now?

Q. The statement you have put in in chief, which involved the making of these other detailed statements preliminarily which have been drawn out in the cross-examination?

A. Would it include making up a written statement as it appears in the analytical book?

A. Yes, sir.

Q. It includes everything except the raw material which appeared on your books, and any papers already prepared at the time the original calculations were commenced?

A. Then it would not include the analytical statement?

Mr. BURRY: No, and would not include line earnings—the three volumes per year.

Mr. JOHNSON: When you began to make these calculations, you had certain books and papers, which, in the regular course of the company's business were amongst its archives; now, I want you to give the length of time, and men employed in making the calculations which evolved themselves into the shape that appears in your examination-in-chief.

A. It would take some little time to think about it.

837 Q. Were there other calculations made showing the items generally of repairs and cost of repairs which has not been, as yet, presented; if so, please produce them?

A. I cannot say yes or no to that. At the present time I really cannot recall; if you desire me to make further inquiry, I will do so.

Q. I wish you would turn to your ledger for the year 1884, showing the Pennsylvania Railroad account?

A. Yes, sir.

Q. At the same time, please produce any schedule made out during the year 1886, showing the running of lines in the Chicago, Southern and Central divisions?

A. I find that the schedules are not usually kept; they are of no value; we may be able to find some of them for last year.

Q. Please have them looked for?

A. I produce Pullman Company Ledger T 2, and refer to pages 612, '13–'14 for ledger account with Pennsylvania R. R. main line, for year ending July 31, 1885; to pages 615 and 616 for Pennsylvania railroad, New York and New Jersey division; to page 618 for the T. W. B. division; to page 620 for Philadelphia and Erie division; to page 624 for the account of the Pittsburgh, Cincinnati and St. Louis Railway Company division; to page 626, Pittsburgh, Fort Wayne and Chicago branch; page 630 for the T. P. & W. division; to page 596 for the Northern Central Railway division, all for the same period. I refer to page 418 for account of Baltimore
838 and Potomac division for the same period; to page 484 for a like account of the Cumberland Valley division; to page 406 for a like account with the Alleghany Valley railroad; to page 438 for a like account with the Cleveland and Pittsburgh branch; to page 595 for a like account with the North-Western Ohio branch; and to page 532 for a like account with the Jeffersonville, Madison and Indianapolis division, for the same period.

Q. Please ascertain last when the sleeping cars of the Baltimore and Ohio railroad, and the Ohio and Mississippi railroad were operated by the Pullman Company?

A. Upon information I state (Mr. Johnson accepts the information as an answer to the question), about the 1st of November, 1880, it being my understanding that the cessation of operations on the Ohio and Mississippi was at the same time as the cessation of operations on the main line of the B. and O. of the Pullman cars.

Q. Please also find what was the cost, in about the year 1878, of remodeling and reconstructing the car Aetna.

(Objected to as immaterial.)

Q. There is on your book an account called "contingency reserve;" please tell me what that account is.

A. I should like to look at it.

Q. Please produce the agreements concerning the running of sleeping cars between the Baltimore and Ohio Company and the Pullman Company.

(Objected to as immaterial and irrelevant.)

(Counsel for the complainant, notwithstanding the objec-
839 tion, produces the contract under protest, with the explanation as it will appear upon inspection not to be signed by the Baltimore and Ohio Railroad Company, but that in the litigation now pending respecting various items of account under that con-

tract, the existence of the contract, and the fact that it is operated under during the period expressed in it, as though an executed contract, is not contested.)

Q. Please, also, produce all bills of repairs of cars run over the Pennsylvania lines on the Central division, made by Harlan and Hollingsworth Company and Bowers and Dure, during the years 1879–'80–'81; have you ascertained about the contingency reserve account? My desire is to obtain the bills charged to the Pullman Company concerning such cars as were under the mileage basis.

(Objected to as immaterial and irrelevant.)

Q. Have you any special sinking-fund account on your books for the purpose of covering the depreciation of cars, headed "sinking fund," or something like that, the idea of the account being to especially cover depreciation.

A. I have no special account for that purpose, though I suppose there are amounts, or would be amounts, in our general surplus fund to cover such depreciation.

Q. You have a general surplus fund of about $12,000,000?

A. In the neighborhood of that.

Q. There is no separation from that?

A. No, sir.

Q. Have you a ledger heading "mileage?"

840 A. Not exactly.

Q. Please produce any proof that from the 1st day of January, 1884, to the present date, you have paid any taxes in any way, shape or form to the State of Pennsylvania, by reason of any cars operated in that State, or by reason of any other fact.

A. I cannot say without looking at the books.

Q. Please do so between this and our meeting after recess. Now, explain what the taxes are for, which you have included as a deduction from the gross earnings of the Pennsylvania lines; you have already done so, but I wish to have you repeat the explanation.

A. I made an explanation as to the fact that I have seen such bills, but I did not say what those taxes were for.

Q. You explained in some way what the scope of the tax was.

A. For the estimated proportion of the taxes due to the business of the Pennsylvania lines, and other lines, included in the statement referred to in the State of Pennsylvania.

Q. A tax by the State of Pennsylvania on the operations of the Pullman Palace Car Company in transporting passengers from one State into Pennsylvania, and through Pennsylvania to other States; is that the answer?

A. That the taxes of $12,500 a year, which I have said is charged to this company by the State of Pennsylvania, are as follows: About $11,000 per annum for tax on this company's gross receipts, imposed under the Pennsylvania act of June 7, 1879; the other

841 amount, about $1,500 a year, is imposed on this company by the State of Pennsylvania as a tax on capital stock under the act of June 7, 1879?

Q. Has there been any deduction in the dividends of the Pullman Company since the going into effect of the new contract with the Pennsylvania Railroad Company?

(Objected to as immaterial.)

A. There was no reduction.

2 O'CLOCK P. M.

Mr. LINCOLN: Are you prepared to answer the question put to you as to the contingency reserve account on your books?

A. I am prepared.

Q. Before answering, I wish to ask you this question: Does that account referred to in the last question of Mr. Johnson contain any entry either of actual receipts or actual disbursements arising out of business done by the Pullman Palace Car Company for business done at any time on lines of railroad to which the Central Transportation Company contract has any reference?

A. It does not.

Q. Does it show, or report, or purport to show, or report any actual expenses, or earnings, or claim regarding them against any person or corporation arising out of the business referred to in my last question?

A. It does not.

Q. Your book-keeping is by double entry, requiring a corresponding credit entry for every debit entry, and *vice versa*, is it not?

842 A. Yes, sir.

Q. Would the elimination of any entry in your contingency reserve account referred to, on either side thereof, and the elimination of the corresponding book entry in another account in the Pullman Company's books take out of any books of the Pullman Palace Car Company, or change, or alter in any way therein any entry, charge or memorandum used in making the calculations resulting in the figures given by you on your direct examination?

A. I would answer, that such elimination would not change those calculations at all.

Q. Would it change any entry, charge, or memorandum used in making those calculations?

A. It would not.

(Under instructions of counsel for complainant the witness declines to produce and exhibit the account referred to, counsel stating that its production is immaterial in this cause, and would result in the improper, irrelevant and unnecessary disclosure of business transactions of this company, and would not disclose any transactions or business of this company pertinent to the issues in this case.)

(Counsel again express their willingness to submit this matter to the commissioner and to follow the precedent referred to in 3d Blatchford.)

(Mr. Johnson declines this, because he deems the commissioner to be without any authority or jurisdiction in the matter.)

843 Mr. JOHNSON: Do you mean to say this item has no connection with the affairs of the Central Transportation Company?

A. I do not mean to say so.

Q. Does not this entry throw light upon the state of the transaction between the two companies?

A. In my opinion it does not.

Q. How can it possibly state anything concerning their affairs and yet not throw light upon them?

A. I do not see exactly what answer I can give to that question except to repeat that, in my opinion, it does not throw any light upon them.

Q. Does that account concern anything excepting the affairs of the two companies?

A. It does.

Q. Is it not mainly devoted to the affairs of the two companies?

A. It is not.

Q. Was that account opened by you before the new contract was entered into between your company and the Pennsylvania Company?

A. It was not.

Q. Is there anywhere on your books an account showing money owing, or probably owing by your company to the Central Transportation Company?

A. Yes, sir.

Q. Is not the contingency-reserve account the one which contains such matter?

A. Which matter?

Q. The matter I have just inquired about.

A. It is not mentioned in the contingency-reserve account.

844 Q. Please produce the account which does contain matters showing the moneys owing, or probably owing, since January, 1885.

A. In answer to the question I produce ledger T 1, page 350.

(A copy of this account is by request of Mr. Johnson furnished with this explanation as to some of the entries. The debit entry of $16,500 of June 30, 1885, and the credit entry of $16,500 of June 30, 1885, and the credit entry of $16,500 of July 31, 1885, and the debit entry of $16,500 of July 31, 1885, represent the two quarter payments of rent claimed by the Pullman Company to be due the Central Transportation Company for rentals tendered to the Central Transportation Company by the Pullman Company and refused by them, these book entries to a book-keeper representing those transactions. The account as standing on the book showing a credit to the Central Transportation Company of the sum of these two rentals, $33,500 carried to the next ledger.

Mr. JOHNSON: What is the meaning of the item of $5,500?

A. Monthly rentals.

Q. That account is balanced, is it not?

A. The balance is carried forward to the next ledger, $33,000.

Q. Please produce the next ledger?

A. I produce the account last called for, being ledger U, 1, at page 352, and at the request of Mr. Johnson I furnish a copy of
845 that account with the explanation that the several debit and credit entries of $16,500 each balance each other and represent our offers of rent to the Central Transportation Company, and its refusal to accept. The net balance shown by that account standing to the credit of the transportation company was carried forward to the next ledger.

Q. Have you not set apart any other fund for the purpose of meeting the claims of the Central Transportation Company, and is there not an account which will show that amount, and is not that account the contingency-reserve fund?

(Objected to as immaterial and irrelevant, and under instructions from counsel for complainant the witness declines to answer.)

Q. Is there not such a setting apart in that fund of amounts, and is there not a statement made in connection with such setting apart, on the books of the company?

(Question objected to as immaterial and irrelevant, and under instructions from counsel for complainant the witness declines to answer.)

Q. In addition to the dividend, has not your company, since the termination of the contract with the Pennsylvania Railroad Company and the making of a new one, set apart a very large fund annually as a surplus of its earnings?

(Objected to as immaterial and irrelevant.)

A. Yes, sir.

Q. Will you not, on the list which you are making now for me of the cars and dates, put opposite each car which came from the West Shore railroad the initials "W. S."?

A. Yes, sir.

846 Q. You were going to inquire whether there was in your ledger a general heading "mileage"?

A. I think I replied there was not.

Q. Do you know how the number of 192 cars was arrived at, or is that within Mr. Bird's province?

A. That is within Mr. Bird's province.

Q. Tell me how the general administration expenses are prorated against the Central division—on what basis?

A. They are prorated against the Central division on the basis of the proportion of the number of cars operated in the Central division to all the cars operated in the company during the month.

Q. The calculation by which the number of parlor cars run was equivalent to one car running 297 month-, was made by you or by Mr. Bird?

A. Upon data furnished me by Mr. Bird it was made by me.

Q. Were there original data furnished by him which you merely added up, or did you contribute any portion of the work?

A. I contributed the names of the cars which was confirmed by him, and he gave me the dates of service on the Pennsylvania lines during this period.

(Mr. Johnson — subject to the answers to some calls to produce bills and other information the cross-examination of the witness is concluded.)

Q. You have asked me what is the meaning of the figures opposite some of the Central Transportation Company cars found in our cost of cars book in a period ending July 31, 1885; to that I answer
847 I am not prepared to explain. It will take me a long time to post myself on the matter, as I am unfamiliar with it.

(Mr. Johnson says the witness need not pursue this inquiry any further.)

The WITNESS: You asked me whether the commissary business on the Pennsylvania line for the years ending July 31, 1885–'6 resulted in a profit or loss.

A. I believe that it resulted in a profit.

Q. Could you tell without much trouble, how much?

A. I was told that, for the fiscal year ending July 31, 1886, the profit was about $4,000.

(Mr. Johnson says that he does not care to have the witness inquire further concerning this matter.)

Q. Is there any other question you are prepared to answer?

A. You asked me, Are the cars described in the second paragraph of Exhibit F, commencing with 122 and ending with Chili, included in a list of property belonging to the Pullman Company?

I reply that they all are except the cars Belle Rose and Bellevue.

Q. In what list are they included?

A. They appear as the property of another concern.

Q. What concern?

A. The Southern Transportation Company.

Q. Is there any other question you are prepared to answer?

A. You asked me if the taxes had been paid to the State of Pennsylvania by reason of cars run on the lines referred to in the statement, I say, No.

848 SATURDAY, *the 3d Day of December, A. D.* 1887.

Present: Mr. Lincoln and Mr. Burry, Mr. Johnson.

JAMES F. BIRD, a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. Burry, and deposes and says as follows:

Q. State your name, residence and occupation?

A. James F. Bird; residence, Chicago; occupation, auditor of receipts of Pullman Company.

Q. Have you examined a statement incorporated into his evidence by Mr. Robertson showing the earnings and expenses of the Pull-

man Company in operating its cars upon the Pennsylvania Railroad lines on the Cincinnati, Hamilton and Dayton, the Cincinnati, Indianapolis, St. Louis and Chicago, and the Louisville, Cincinnati and Lexington railroad lines which I now submit for your inspection?

A. I cannot say that I have thoroughly examined such a statement, as I would have no interest to do so except so far as the gross earnings are concerned.

Q. Have you examined it carefully so far as it purports to show the gross earnings of this road?

A. I have not.

Q. Please do so?

A. I have done so.

Q. The gross items shown is the gross earnings on the Pennsylvania Railroad lines $1,471,312.05; did you assist in ascertaining that amount?

A. I did.

849 Q. How did you ascertain the amount of the earnings of the cars upon the Pennsylvania lines for the seventeen months to which that statement relates?

A. The gross earnings are made up by lines, it being impossible to show it accurately by cars, the lines are so interwoven with each other. Each line is taken on its own basis and all earnings for the line shown.

Q. Do any of these lines that are operated on the Pennsylvania system also extend off it?

A. They do.

Q. How did you divide the earnings of those lines between the Pennsylvania system and the other road over which they ran?

A. On the basis of the through mileage of the line.

Q. Divided how?

A. As the Pennsylvania proportion of the mileage is to the through mileage so would the Pennsylvania earnings be to the through earnings.

Q. That is, you divide the receipts between the Pennsylvania system, and the other roads according to the mileage that each of them had?

A. Yes, sir.

Q. In the case of lines, the cars of which ran wholly upon the Pennsylvania system, did you credit all the earnings to the Pennsylvania Railroad system?

A. I did.

Q. In the course of your making up of the earnings on the Pennsylvania system for these seventeen months, did you find it necessary to make a schedule of lines operated which ran upon or touched the Pennsylvania system?

850 A. Yes, sir.

Q. Did you include the gross earnings on each of those lines separately?

A. I did.

Q. There has been produced in this examination five large vol-

umes, being reports of lines by months, with abstracts thereof for years, showing the mileage and the earnings of the cars operated, you are familiar with those books, and they are kept under your supervision, are they not?

A. Yes, sir.

Mr. Johnson says that Mr. Burry need not examine at any length upon the subject of the make-up of the books, because he is willing to accept the books as though they were original records.

Q. Was this calculation of gross earnings upon the Pennsylvania lines made up by you from the books to which I have last referred?

A. They were.

Q. Are those books the regular books of the complainant company made in the ordinary course of business, and without any reference to this present investigation?

A. They are.

Q. Please state the gross amount of the earnings ascertained by you in the manner you have just stated upon the Pennsylvania system for the seventeen months referred to.

A. $1,453,588.03.

Q. State how much of that was upon lines local to the Pennsylvania system.

A. $1,359,239.20.

851 Q. How much is earnings on through lines, that is, lines of cars which ran upon other roads as well as upon the Pennsylvania roads?

A. $94,348.83.

Q. I will now ask you to produce, to be attached to your testimony as an exhibit, a statement showing the number and name of the different lines earning the amount you have given, with the gross earnings upon each line, specifying which are through lines and which are local to the Pennsylvania system.

A. I present it herewith, as Exhibit "A."

Q. I notice that on the statement by Mr. Robertson just referred to, the gross earnings of the Pennsylvania system were given at a higher figure than the gross earnings of the lines embraced on the schedule just presented to you; do you know what other earnings of the Pennsylvania system than those you have just produced are embraced in the larger figures?

A. To the best of my knowledge, the difference is caused by certain mileage which the Pennsylvania system agreed to pay this company on three small lines specified in the contract.

Q. Will you please state how much that mileage amounted to in the seventeen months referred to?

A. The mileage of the three lines amounted to $14,224.22, I believe.

(Mr. Johnson says he is willing to take the statement of the witness as true.)

Q. Did you make up the gross earnings of the C., H. & D., the

C., I., St. L. & C., and the L., C. & L., as shown upon the first statement produced by Mr. Robertson as above referred to?

852 A. I made up the statement.

Q. Did you make up the gross earnings of the three roads last mentioned in the same way as you did the earnings of the Pennsylvania system, and from data of the same character?

A. I did.

Q. Were the calculations of these gross earnings made by you, and under your direction, carefully and accurately made?

A. They were.

Q. It has been shown in the testimony that certain repairs put upon cars belonging to the Atlantic Coast line have been included in the repairs charged against the Pennsylvania system in the statement so produced by Mr. Robertson. In making up the statement of earnings of the Pennsylvania system above referred to, have you credited the Pennsylvania system with any earnings made by the Atlantic Coast Line cars; if so, on what principle, and how?

A. I have. When running in through lines on a mileage basis, and when running in local lines bodily.

Q. In local lines, where?

A. Whenever occasion demanded, it was customary to use all Coast Line cars in any local Pennsylvania line to keep the line protected.

Q. Give an instance of a line on which Coast Line cars could be so used.

A. Any line from Jersey City to Washington, sometimes they use them for months at a time.

Q. Then, I understand when Atlantic Coast Line cars

853 earned money on lines on which they traveled on Pennsylvania Railroad lines, a proper proportion of the earnings was credited to the Pennsylvania system?

A. They were.

Q. Are you acquainted with the length of the different lines mentioned on the statement of line earnings you have produced here?

(Mr. Johnson says he is willing to take the schedule of lines as printed by the Pullman Company as properly presenting the lengths of the various lines.)

A. I am.

Q. Do you know the frequency of the service upon them generally?

A. Generally speaking, I do.

Q. Do you know generally the length of the time it takes a car to go over different lines?

A. Yes, sir; generally.

Q. Do you know, and have you made a calculation of about how many cars actually running it takes to fill the lines on the statement produced by you?

A. I have.

Q. Have you also made a calculation of how many cars it would

take to operate those lines; by the word "operate," I mean to include the necessary number of cars, to allow the proper cleaning, lying over for connections, the usual number allowed for extra travel, and the usual number necessary for shopping, as sometimes termed, to keep the lines in operation?

A. I have.

854 Q. Have you made like calculations and estimates of the number of cars required to operate the Central division of the Pullman Company, using the word "operate" in its larger sense?

A. I have.

Q. How many cars did it take to operate the Central division during the seventeen months referred to, giving your best judgment?

A. About 254.

Q. Do you state that figure from having heretofore made calculations on that subject?

A. Yes, sir.

Q. Now state the number of cars that were necessary to operate the Pennsylvania Company's lines during the same period, according to your best judgment, on the same basis.

A. 192.

Q. In my question I ask you to give the number required to operate the lines of the Pennsylvania system; I now ask you how many of that 192 would be in actual operation on their feet, or turning their wheels, so to speak, at any one time.

A. The number would of course vary.

Q. Give us the average during the time, about how many?

A. I have not made any calculation to show an average, but they would vary from 160 to even more than 192 necessary at any one time.

Q. It would, at times, fall below 160, would it not?

A. I don't think it would.

Q. The movements of all cars operated by the Pullman Company come under your observation, do they not?

855 A. They do.

Q. Through reports of conductors and others connected with them, I suppose?

A. Yes, sir.

Q. In addition to the Pennsylvania system of roads shown upon Mr. Robertson's statement before you, are the other three roads I have questioned you about; you have testified that it would take 192 cars to operate the Pennsylvania system; how many cars do you consider it requires to operate the other three roads mentioned?

A. I should say twelve cars.

Cross-examination by Mr. JOHNSON:

Q. I find in your list there are certain lines not mentioned which appear in one or the other of these books that have already been produced showing the gross earnings of the lines of the Central

division for the two years ending July, 1885, and July, 1886; I call your attention to line 101, for instance; I have no doubt there is an explanation of it, but I want you to give it to me. For the year ending July, 1886, there is no line 101, but for the year ending July, 1885, there is; was that line discontinued before the 1st of February, 1885?

A. That I cannot answer without examination.

Q. Do that with reference to lines 101, 117, 141 and 148.

A. Our records show lines 101, 117 and 141 were discontinued March 30, 1885; line 148 is not a Pennsylvania-system line, and was transferred to another division the latter part of 1884.

856 Q. Ought there not to be some credit for the earnings, up to the time of the discontinuance of those lines?

A. It would seem to me that there should be. There are no cars charged against the line.

Q. I will ask you now to look at line 614, which appears for the year ending July, 1886, and for which there is no credit given, and also line 615?

A. The answer to that is that it was put on after July, 1886; the number of line 614 was changed to No. 173, and the earnings are credited under that number; No. 615, the records show, opened April 6, 1885, and was discontinued in August, 1885.

Q. Then, there was a trifle of earnings during the fiscal year ending July 31, 1886, which has not been credited, is not that so?

A. That would appear so.

Q. Now, for the matter of "special" there is no credit for that item for the year ending either July, 1885, or the year ending July, 1886, "special" I see for the year ending July, 1885, is credited with $36,102.79, and special for the year ending July 11, 1886, is credited with $35,714.25. Were not some of the earnings of some of those special trains on the Pennsylvania Railroad lines?

A. Undoubtedly the territory was covered to a certain extent.

Q. It was a mistake, therefore, to have omitted the proper credit out of that special, was it not?

A. I am not prepared to say that. The statement of earnings that I furnished was made up on the usual basis. Line special, in any division, is so far-reaching a term that it has never been

857 considered as part of the earnings in making up a statement for the lines of any particular road.

Q. I should suppose that was so, inasmuch as special implies there is no regular line in which the earnings have been made; is not that so?

A. That is so, exactly.

Q. But none the less those earnings, for the two years I have named, were all in the Central division, and properly credited to that Central division?

A. They were all made either by Central-division cars——

Q. Or on Central-division tracks?

A. No, sir; not at all. It was made up principally of chartered-car service, either at a fixed sum for the whole journey or a *per diem*

rate. The car might not touch the Central-division roads for the whole journey.

Q. But is always a Central-division car?

A. Principally.

Q. And is properly placed in the Central division, in the general summarization of earnings of that division; is it not?

A. As a matter of convenience of accounts, that is all.

Q. In making up your statements, did you credit the Central Transportation Company with any share of the earnings of the St. Louis, Vandalia and Terre Haute railroad?

A. Yes, sir.

Q. With a share of the earnings of the Cincinnati, Richmond and Fort Wayne?

A. It must be under some other name.

858 Q. Grand Rapids and Indiana. Did you credit any share of the mileage of that?

A. We don't run over that.

Q. Did you credit it with the earnings of the Alleghany Valley railroad?

A. I did not.

Q. No credit is included in that account of earnings over the Alleghany Valley road?

A. No, sir.

Q. How with the Cumberland Valley road?

A. They are included.

Q. Be kind enough to tell me what were the earnings over the Alleghany Valley railroad for the year ending July, 1885, and for the year ending July, 1886.

A. I think that is lines 165 and 166; the earnings for the year ending July 31, 1885, are as follows: Line 165, Pittsburg and Buffalo sleeper, $10,524; line 166, Pittsburg and Buffalo parlor, $1,530.75; for the year ending July 31, 1886, line 165, name as above, $9,980.25; line 166, $1,688.50. These are simply gross earnings.

Q. Do you know whether there are any lines which connect with any of the railroads, which are part of the Pennsylvania system, which lines are in other divisions and over which lines in other divisions so connecting with the Pennsylvania Railroad lines, Pullman cars are run to Chicago or St. Louis?

A. I have in mind but one, from Chicago to St. Louis, connecting with the Vandalia, I think, at Effingham, but which is run, not by virtue of any contract with the Pennsylvania road, but owing

859 to some arrangement, track lease, I think, between the Illinois Central and the Vandalia; the mileage over the Vandalia being charged directly to and paid by the Illinois Central railroad.

Q. No credit is given for that?

A. No credit is given for that.

Q. How with regard to any similar case in the line running into Cincinnati from one division across any of the lines in the Central division, Pennsylvania part thereof?

A. I have no such line in mind at present.
Q. Your position in the Pullman Company is exactly what?
A. The title of my position, is auditor of receipts.
Q. And you have occupied that position, how long?
A. The position, or the title?
Q. The position.
A. The title is rather a new creation.
Q. How long have you occupied that position, no matter what its title was?
A. I think about three years.
Q. And prior to that, your position was what?
A. Clerk in the same department.
Q. Tell just what is the general nature of your duties occupying the position you have stated.
A. I receive the reports of all earnings of cars, credit them to the proper cars and lines, check the tickets and audit the berth checks, and there are various other minor duties, but those are the principal ones.

860 Q. Let me see the paper or the figurings of your calculations of the number of cars, in your opinion, required to operate the Central division and the Pennsylvania portion thereof.

Adjourned to 9 o'clock a. m., December 4th.

Parties met pursuant to adjournment, and the cross-examination of the witness was resumed as follows:

Q. Have you been able to find the basis of the calculation you have given as to the number of cars?
A. Yes, sir; the original memorandum was not in existence.
Q. Have you got a copy of it?
A. Yes, sir; that will show the basis on which it is made—I mean the pencil figures I used.
Q. From what source did you gather the calculation you now produce?
A. It was taken from my own general knowledge of the number of cars necessary to fill the line.
Q. How gathered, from printed schedules?
A. No, sir, not wholly; from the actual facts and my knowledge by observation of the running of the cars.
Q. Your observation has simply been by papers which come into the office?
A. By diagrams, yes, sir; the actual running of the cars.
Q. Didn't you gather this from the printed schedule of the lines?
A. You refer to the statement before you?

Q. Yes, whether this, or the materials on which it rested, 861 are gathered from certain printed schedules of lines?

A. It was not wholly; of course, they aided to a certain extent in giving me general knowledge.
Q. I wish you would let me see such printed schedules of lines as you did refer to in getting up this calculation?

A. I referred to none in making the calculation, because I had none; it was the result of my general knowledge of the lines.

Q. Do you know anything about certain figures 287 that appear in the books of the company, written in lead pencil, above 247, as the number of cars operated in the Central division?

A. I do not.

Q. Did the number 287 in any way figure in your calculation?

A. It did not.

Q. Give me the basis of your data of the Cincinnati, Hamilton and Dayton and the two other railroads?

A. That shows on the statement, which, I believe, has been put in evidence.

Q. You have no other data underneath that?

A. No, sir.

Q. Did you credit all the earnings of the Cincinnati, Hamilton and Dayton and its tributary roads, or only the main stem of the Cincinnati, Hamilton and Dayton?

A. All controlled roads.

Q. Let me see the book of line earnings for the two years ending July 31, 1885, and one ending July 31, 1886, of the Southern
862 division and of the Chicago division. Is line 546 in the Chicago division?

A. In the Southern division.

Q. Is the car which runs in line 91, between Chicago and Cincinnati, confined to that run, or does it also alternate in other places, or make a longer run?

A. I cannot say that any cars are confined to any one line in the whole company, but while allotted to that line, the car would make no longer run, running simply between Chicago and Cincinnati.

Q. That is not altogether what I meant to gather from the question; it was whether a car, whatever it was, it might change from time to time, but the car that fills line 91, made no longer run than between Chicago and Cincinnati?

A. It did not.

Q. I see line 91 for the year ending July 31, 1885, earned $3,972.75, and that the same line 91, for the year ending July 31, 1886, earned $9,778.50; will you be kind enough to see whether I have correctly read the figures from the book before me?

A. Yes, sir; you have.

Q. I see in the schedule of lines for the Central division which Mr. Burry has produced, under my call, there are three blank columns left for the purpose of showing the location of cars, with remarks, etc.; do you have on file in your office such schedules with the remarks filled in?

A. I do not; they were never forwarded to me filled in. As I of course kept an account of the car and would know where the car was at any time.

Q. No returns of that sort filed in the office?

A. No, sir.

863 (Mr. Burry produces under call, schedules of lines, Pullman Palace Car Company, Central division, No. 96, August

4, 1886; No. 97, September 25, 1886; No. 98, November 23, 1886. Similar schedules of lines for the Chicago division, No. 79, August 18, 1886; No. 80, October 9, 1886, and No. 81, December 18, 1886. Similar schedules for the Southern division, No. 7, June 27, 1886, October 16, 1886; No. 7, June 27, 1886, August 28, 1886; No. 7, June 27, 1886, September 18, 1886; No. 8, November 1, 1886, November 13, 1886, and No. 9, December 4, 1886, December 18, 1886.)

(In connection therewith he states that these statements are printed matter which he is willing Mr. Johnson should examine, protesting, however, that they are irrelevant to this case as relating to a period not under investigation here.)

(Mr. Johnson asks that Mr. Burry will furnish any schedules between January, 1885, and July, 1886, that he possibly can, in the absence thereof he will want to use these schedules as being the best data obtainable.)

Q. In calculating the proportion of lines 506 and 513 of the L., C. and L. mileage, please tell me what was the nominator and what the denominator, or what was the number of miles attributed to this.

A. In calculating the mileage over the L., C. and L., the figures taken were those charged to the Louisville and Nashville on account of the L., C. and L., that company assuming the mileage.

864 (Witness is shown schedules of lines marked respectively, "S. W. B. 1, S. W. B. 2 and S. W. B. 3," and asked this question, As far as they are in print, are they official printed publications of your company?)

A. They are.

(Mr. Johnson asks that complainant shall produce printed schedules which have already been exhibited to them for use in the argument of the case.)

Q. When an Atlantic Coast Line car was run out of its regular line, a car belonging to the association I mean, onto the Pennsylvania system, was not one-half of the earnings of the car accounted for to the association, or to the other members of the association to which the car belongs?

A. It was; but, of course, in making up the line statements, the earnings went by lines regardless of what cars earned them, and such earnings would also go to the credit of the Pennsylvania system.

Q. Is it not a fact that for the year ending July 31, 1887, the earnings of the Central division including the earnings of the Pennsylvania line part thereof, show a very large increase over the earnings over the year ending July 31, 1886?

(Objected to as immaterial and irrelevant to this investigation, and under instructions of counsel the witness declines to answer.)

Q. Is it not a fact that for the year ending July 31, 1887, the gross earnings per car of the Central division, and also the Pennsylvania lines, part thereof were largely increased over those for the year ending July 31, 1886?

865 (Objected to, for the reasons stated above, and the witness under instructions of counsel for complainant declines to answer.)

Q. Is it not a fact shown by your books that for the year ending July 31, 1887, the gross expenses for maintenance and operation of the Central division including the Pennsylvania lines, part thereof were considerably decreased in comparison with the gross expenses for operation and maintenance of the same division and line for the year ending July 31, 1886?

(Same objection.)

Q. Is it not a fact shown by your books that for the year ending July 31, 1887, the repair account of cars operated in the Central division and over the Pennsylvania line was very considerably less than the repair account for the cars operated over the same lines for the year ending July 31, 1886?

(Same objection.)

Q. You have not been able to find the original calculation for the C., I., St. L. & C. similar to the two in the case of the Cincinnati, Hamilton and Dayton and the Louisville, Cincinnati and Lexington?

A. I have not.

Redirect examination by Mr. BURRY:

Q. You have testified that lines 101, 117, 141 and 615 made earnings on the Pennsylvania line during part of the seventeen months, the accounts of which we are investigating, but that you have not included such earnings in the amount shown as the gross
866 earnings of the Pennsylvania Railroad lines on the statement first produced by Mr. Robertson, is not that so?

A. It is.

Q. Why were such earnings omitted from that sum total?

A. It was simply a clerical error. Owing to the hurry in which the statement was made up, and the short time which the lines ran during the seventeen months they were overlooked.

Q. About how long did the line- run?

A. Three of them ran the first two months of the seventeen months, the other ran, I think, four months, at some period near the middle of the seventeen months.

Q. Have you made a calculation of the gross earnings of those four lines so omitted, through mistake, from the sum total of the earnings of the Pennsylvania line?

A. One has been prepared under my orders in a hurried manner.

Q. How much does it show as the gross earnings of those lines?

A. $17,831.75.

Q. Is that the gross amount earned by these lines?

A. It is.

Q. Please state how many miles the cars traveled in making those earnings?

A. The calculations before me show 393,451 miles.

Q. Were there included in the statement presented by Mr. Robertson any expenses of maintenance, operation, repairs, or
867 of any other character on account of the cars filling these lines, or making these gross earnings?

A. There could not have been, as I did not take the number of cars into consideration in preparing the total number of cars necessary.

Q. Do you know any reason why the proportion of gross to net earnings shown on the statement in regard to the gross earnings of the Pennsylvania Railroad lines should not also hold and apply to those omitted gross earnings?

A. I know of none.

Q. Have you included in the gross earnings of the Pennsylvania Railroad lines all earnings made by association cars on those lines?

A. I have.

Q. Was this done by you without regard to the fact that part of the earnings of the association cars have to be paid to other members of the association?

A. It was.

Q. In estimating the number of cars required to fill lines or divisions, you have, I understand, made an allowance for a certain number, or percentage of cars, required to meet the shopping necessary to lie over for connections and cleaning, and to some extent for emergency service, have you not?

A. I have.

Q. Were you guided in arriving at the amount so allowed for those items by any general calculation you have made of the Pullman service from say a period of five years on a large number of cars?

A. I was.

Q. When was such general average made?

A. My recollection is it was in November, 1885.

868 Q. Was it made with any reference whatsoever to this suit?

A. It was not, it was made for general information.

Q. As to the profits and conduct of the company?

A. As to the amount necessary for such service.

Q. Was the calculation based on theory or experience?

A. The calculation was based on facts taken from the books, I ascertained the life of each car, how many days it was in service, how many days idle, and how many days in shops as shown by my books.

Q. Did you make such a calculation covering the operation of 713 cars for five years?

A. I did.

Q. Ending when?

A. Ending July 31, 1885.

Q. Have you prepared a copy of the original calculations made in that respect?

A. I have.

Q. Please produce it to be attached as Exhibit B to your testimony.

A. I will do so.

Q. I understand that the schedule you have just produced is the result of the actual experience of the Pullman Company in operating its cars?

A. It is.

Q. Compiled principally from its books?

A. Wholly from its books.

Q. Do you know whether or not the 713 cars mentioned in this statement include cars in the Central division?

A. They do.

869 Q. You have reported, and there is shown on the statement presented by Mr. Robertson, $32,785.27 as the gross earnings of the Cincinnati, Hamilton and Dayton railroad; does that include all the earnings of cars upon the C., H. and D., or were some of the gross earnings of the cars upon that line included in the gross earnings of the Pennsylvania Railroad lines, as shown upon the same statement?

A. There is one line included in the latter statement.

Q. On what road does that line run?

A. It ran from Chicago to Cincinnati via C., St. L. and P. and Cincinnati, Hamilton and Dayton, and I believe 224 miles over the former and seventy miles over the latter.

Q. That is the line running from the Pennsylvania lines to the C., H. and D.?

A. Yes, sir.

Q. The earnings of the whole line appear upon this statement, but they are all in the Pennsylvania account, instead of being apportioned between the two roads?

A. They are.

Q. Then, to be exactly correct, part of the earnings of the line ought to be taken out of the Pennsylvania gross earnings and put into the C., H. and D. gross earnings?

A. To be absolutely accurate.

Q. Referring to the special earnings shown in the Central division for the two years ending July 31, 1886, and amounting to about $70,000 for the two years; explain more in detail what those special earnings consist of.

870 A. They are the results principally of chartered cars at a fixed sum for the whole journey, or a *per diem* rate, and the car in such service might run over the whole count-y to San Francisco, the city of Mexico, or any other point.

Q. A car, then, chartered in New York, which is in the Central division, to be absent five months on a California trip at so much *per diem*, running over any road it pleases, the earnings of that car would be included in this head of special earnings, would it not?

A. If the car belonged to the Central division.

Q. If the car belonged to the Central division?

A. It would.

Q. Would the earnings be equally there if that car started from

Philadelphia over the B. & O., ran through the Southern States out to California, and never touched any of the lines in the Central division?

A. They would.

Q. Why do you keep the account then, in the particular place where you do?

A. Simply as a matter of convenience in accounts.

Q. Is it determined by the roads over which the chartered car runs?

A. It is not.

Q. If a car ran from New York over the New York Central road to Chicago, a Pullman car, under such a charter, would the earnings be included in this account?

A. They would.

Q. In chartering such cars, is it necessarily stipulated over what roads they shall run?

871 A. It is not.

Q. As a usual thing, the cars are given to the parties, and they take them over any road they like?

A. That is the fact.

Q. Is this account wholly, or almost wholly, made up from such sources?

A. It is principally made up from such sources.

Q. What per cent. do you think is not made up from such sources?

A. I think it would be impossible to make an estimate.

Q. Will you please make, if possible, and attach to your deposition as Exhibit C, a schedule, or statement, showing the proportion of those special earnings on a mileage basis, with the earnings on any of the four roads exhibited in the first statement, submitted by Mr. Robertson for the seventeen months under consideration?

A. I will do that.

(Mr. Johnson says that he is quite willing that Mr. Bird shall prepare such statement, subject to his right, if he shall desire to put written interrogatories to the witness concerning the same.)

Mr. LINCOLN: The earnings under the special account being about $70,000 for the two years ending July 31, 1886, were the gross earnings of the cars, were they not?

A. They were.

Q. What is line No. 91?

A. It is from Chicago to Cincinnati via Louisville, New Albany and Chicago, and the C. H. & D. railroad.

872 Q. Did you return the gross earnings of that line, and divide them between those two roads on a mileage basis?

A. I did.

Q. Is there included in this first statement presented by Mr. Robertson, that share of the gross earnings of that line on that basis, properly belonging to the C. H. & D.?

A. There is.

Recross-examination:

Q. Of course, in this special account, wherever the cars ran, it is the earnings of the car that are reported in the Central division, and the repairs of which have been charged in the statement against the Central division, is it not?

A. I can answer nothing about repairs. I have no knowledge of that whatever.

Q. You have stated that a certain percentage, as the percentage of allowance for cars lying idle, or being repaired in shops, have you not?

A. I have.

Q. Of course, that percentage of cars carries no depreciation account does it?

A. That I have nothing to do with.

Q. Don't you know that a car that is lying idle, or being repaired, and is not running, has no depreciation account during the time of idleness or repairs?

(Objected to, because on the ground that the witness has not been presented as an expert on the subject of the depreciation of cars.)

A. It is something I have not given any attention to.

JAMES T. BIRD.

873 EXHIBIT A TO MR. BIRD'S DEPOSITION.

Pullman's Palace Car Co.

Statement Showing Gross Earnings of Cars in Lines Running over Pennsylvania Railroad from February 1st, 1885, to June 30th, 1886.

	Number and name of line.	Gross earnings.
100	Chicago and Jersey City	$128,486 00
102	" " "	63,331 85
103	" " "	79,015 75
104	Philadelphia " Pittsburg	19,156 75
105	Altoona " Chicago	15,642 50
106	Washington " "	27,777 25
107	" " Pittsburg	20.566 "
109	Jersey City " Cincinnati	46,288 "
110	" " Louisville	60,819 75
111	" " St. Louis	92,418 25
112	" " "	58,940 50
113	" " Pittsburg	22,907 50
114	Philadelphia " "	50,307 50
115	Jersey City " Cleveland	27,382 70
116	" " Philadelphia	14,680 25
121	" " Washington	72,825 25
122	" " Baltimore	36,571 50
123	Philadelphia " Washington	16,038 50
128	" " Erie	21,824 50
133	Pittsburg " Toledo	7,268 "
134	" " Cleveland	14,044 75
135	" " Indianapolis	9,308 25
136	Washington " Rochester	23,764 50
137	St. Louis " Cincinnati	2,304 50
138	" " Indianapolis	14,913 50
139	Chicago " Jersey City	46,311 "
140	" " Cincinnati	25,688 "
142	Jersey City " "	47,167 50
143	Pittsburg " "	21,551 "
144	Philadelphia " Williamsport	5,249 25
145	Columbus " Peoria	1,437 "
146	Pittsburg " Cincinnati	2,648 75
155	Cleveland " "	8,135 "
168	Jersey City " Cape Charles	17,823 25
173	Chicago " Pittsburg	12,260 50
108 and 174	Chicago, Pittsburg & Washington	7,624 25
118	Jersey City and Washington	36,478 "
119	Philadelphia " "	4,419 75
120	Jersey City " Baltimore	7,031 "
124	" " Washington	50,787 50
125	" " Baltimore	12,954 25
126	" " Pittsburg	30,317 "
127	Philadelphia " Williamsport	6,979 50
129	" " Long Branch	6,465 50
130	" " Richfield Sp'gs	106 50
131	Camden " Long Branch	997 "
132	Jersey City " Point Pleasant	4,862 50
149	Washington " Harrisburg	5,698 65
154	Jersey City " Washington	26,966 75
169	" " Cape Charles	5,858 25
171	" " Washington	16,837 75
	Total	$1,359,239 20

874 Through lines.

	Number and name of line.	Gross earnings.	Proportion of mileage.	Proportion of gross earnings.
147	Philadelphia and Montgomery..	$14,277 "	179–1045	$2,445 53
186	Jersey City " Jacksonville..	99,531 "	262–1073	24,303 "
196	" " Aiken.... ...	23,063 "	262–921	6,560 81
160	Philadelphia " Boston.....	28,356 25	90–322	7,894 60
161	Washington " "	45,261 "	228–460	22,431 71
175	Jersey City " Chattanooga..	50,031 90	269–900	14,953 98
180	" " Atlanta	60,548 50	228–876	15,759 20
	Total	$321,068 65	.....	$94,348 83
	Aggregate	.....	.....	$1,453,588 03

EXHIBIT B TO BIRD'S EVIDENCE.

Statement Showing Percentage of Shoppage and Idle Time to Service of 713 *Cars for* 3 *and* 5 *Years Ending July* 31*st*, 1885.

	Days.	Percentage to service of—		Percentage of shoppage and idle time to service.
		Shoppage.	Idle time.	
713 cars 5 years (662 sleepers, 51 parlors).	Shoppage..... 124.539 Idle time..... 42.175 Service..... 857.024	14.54	4.92	19.46
713 cars 3 years (662 sleepers, 51 parlors).	Shoppage..... 72.425 Idle time..... 29.635 Service..... 562.860	12.86	5.26	18.12
662 sleepers 5 years.	Shoppage..... 107.244 Idle time..... 31.219 Service 773.369	13.86	4.04	17.90
662 sleepers 3 years.	Shoppage..... 63.402 Idle time..... 22.566 Service..... 511.154	12.40	4.41	16.82
51 parlors 5 years.	Shoppage..... 17.295 Idle time..... 10.956 Service..... 83.655	20.67	13.09	33.76
51 parlors 3 years.	Shoppage..... 9.023 Idle time..... 7.069 Service..... 51.705	17.45	13.67	31.12

875 EXHIBIT C TO BIRD'S DEPOSITION.

Statement relating to the $71,817.04 gross earnings, found under head of "special service," made in the two years ending July 31st, 1886, showing by months amount earned during the seventeen months ending June 30th, 1886, and showing the part of those earnings made by cars while upon Central Transportation Company roads on mileage basis.

Gross Earnings.

Date.	On Penna. system, C., H. & D. R. R., C., I., St. L. & C. R. R., L., C. & L. R. R.	Other R. R's.	Total.
February, 1885	$1,281 85	$6,761 65	$8,043 50
March	4,143 65	2,875 85	7,019 50
April	1,382 44	752 20	2,134 64
May	1,304 90	3,336 15	4,641 05
June	979 60	1,142 15	2,121 75
July	759	1,548 25	2,307 25
August	1,326 25	62 25	1,388 50
September	1,390	674	2,064
October	1,016 45	579 30	1,595 75
November	740 75	484 25	1,225
December	763 30	541 20	1,304 50
January, 1886	1,649 85	1,713 55	3,363 40
February	1,496 50	2,077 05	3,573 55
March	1,316 45	2,318 35	3,634 80
April	1,740 55	4,623 20	6,363 75
May	1,867 40	601 10	2,468 50
June	1,761 75	1,099	2,860 75
	$24,920 69	$31,189 50	$56,110 19

876 *Testimony Taken the 4th Day of December, A. D.* 1887.

Present: Mr. Lincoln and Mr. Burry, for complainant; Mr. Johnson, for defendant.

F. C. N. ROBERTSON, being recalled, testified as follows:

Q. Mr. Johnson asked me a question twice yesterday, Have you an account called "mileage" on your books? I replied the first time, No, not exactly; the second time he asked it I said, "No." I would like to add a word to that if I may be allowed. I have an account, which is possibly the one you mean, and that is the mileage of wild cars. The reason I did not say so at the time was because you had already asked for that account and I had produced it, and therefore I inferred it was not that account you referred to. The word mileage enters into the name of several accounts more or less, and I don't know which one you might want.

Mr. LINCOLN: You mean you have no general account which is simply called "mileage"?

A. Yes, sir. In this statement I have before me I find a clerical error in copying it of $500 in the gross earnings of the Pennsylva-

nia lines which speaks for itself. I would like to correct that. The gross earnings of the Pennsylvania lines reading $1,471,312.25, and should read $1,471,812.25; this makes no difference at all in the result, and the deductions are right, it was merely an error in copying the figure eight. I would like also to produce to Mr. Burry
877 the paper which Mr. Johnson called for day before yesterday, but which I could not find at the time.

(The paper which Mr. Robertson produces is called a statement showing the gross earnings of sleeping cars on lines running over the Cincinnati, Indianapolis, St. Louis and Chicago, an average number of cars required between dates.)

The WITNESS: I can also reply to some of the questions heretofore asked. First, what was the cost of remodeling the car Etna in 1878?

A. The Etna was in the shops in 1879, and the total cost is $2,612.74.

Q. Is that the time she was remodeled?

A. I can't tell you whether it was remodeling or not.

Q. It was not shopped in 1878?

A. No. Second, ascertain the length of time and number of clerks employed in making up statements and substatements on which the former are based. Mr. Bird had four or five men about two days and nights, and in my office there were two or three men about three or four days and nights. This work does not include that of compiling the two books showing mileage and repairs for sixteen months, beginning the 1st of February, 1885, and ending 1st of June, 1886. Third, produce schedules of lines operated in 1886 in Central, Southern and Chicago divisions. To the extent that we have been able to find them this call has been answered, I am informed by Mr. Bird.

Fourth, produce bills of repairs made by Harlan & Hol-
878 lingsworth Company, and Bowers, Dure & Co. in 1879–'80 and '81, on Pennsylvania system cars on mileage basis over Central division. I have some of those bills here, but not all; it would take some time, probably more than today, to ascertain exactly what cars are referred to, and get the bills.

Mr. JOHNSON: Please let me see such as you have and probably that will sufficiently answer the call.

A. I was asked to produce bills for lists of cars read off to me by Mr. Johnson. I produce them with a few exceptions. I cannot, after search, find the missing bills. These bills comprise the bulk of the amounts called out to me by Mr. Johnson; the balance of them being for small charges from sundry sources which he does not require.

Q. Have you got the calculations by which you made the repairs of the special parlor cars equal to one car for 297 months?

A. Yes, sir.

Q. Please let me see that?

A. I here produce it. The lead-pencil figures between the last

service of Pennsylvania railroad and the charges in dollars and cents are the figures of that calculation.

Mr. BURRY: Attention has been called to earnings amounting to about $70,000 in two fiscal years, kept under the head of special earnings in Central division; have you heard Mr. Bird's testimony on that point?

A. I was present for a few moments today, but did not hear the whole of it.

879 Q. It has been testified that the earnings, consisting almost entirely of rents of chartered cars running to any place in the United States, provided the cars belonged to the Central division, that it does not necessarily imply that the cars, while on such special service, were operated upon any railroad in the Central division. In the account of expenses charged in the statement first produced by you, including repairs, operation, maintenance and other things, is there any charge made for the expenses of those cars?

A. I would say on the face of it, I think not, but it would require an exhaustive examination of the subject to be able to answer definitely.

Q. For instance, if a car went to California for five months, would the expenses of the conductor or porter in charge of that car appear in your item of operating and maintenance in the statement first produced by you?

A. They would not. Please let me modify that. I would prefer to recall that answer and say that it would not be safe for me to answer definitely without, as I say, an exhaustive examination.

Q. How long a time would it take?

A. I can hardly tell; it would take more than a day, I think; I would have to examine the matter thoroughly with Mr. Bird.

Q. I will ask you to make such examination, and before signing your testimony insert your answer to the question regarding this matter.

(Mr. Johnson says that he is willing the witness should do this, provided his answer will include in detail a list of all the cars which made the special earnings, with the amount of earnings set opposite each car, and the time during which it was earned, and
880 says that with the answer embodying this information he is quite willing that the witness shall do what is requested, subject to his right, if he should not be satisfied with the answer to put a written interrogatory to cover it more definitely.)

Q. You testified on cross-examination that you divided the repairs of cars between the cars making earnings on the Pennsylvania system on a basis of the number of miles they ran on and off the four roads?

A. Yes, sir.

Q. You have also testified, that in arriving at the proper amount to be charged against the quota of cars required to operate that road under the head of operating and maintenance, you divided such charges in proportion to the number of cars required to operate on

that road, as compared with all the cars required to operate the division?

A. Yes, sir.

Q. Do you consider that a fair, equitable way of making up the charge for expenses of the Pennsylvania system?

(Objected to as irrelevant.)

A. I do.

Q. Do you know any fairer way that would be practicable?

(Objected to.)

A. I do not.

Q. It appears from the testimony here, that several mistakes in figures were made in the affidavit filed in this case by Mr. Little; was that affidavit prepared in a hurry?

A. It was in a very great hurry.

881 Q. Do you remember how long Mr. Little had been auditor at that time?

A. I think less than a month, about twenty-three days.

Q. Then he was not personally familiar with these matters?

A. Not in the slightest; he could not possibly be.

Q. The affidavit was prepared, I suppose, in good faith, and in the best way possible in that space of time?

A. Without question. I would like to add a remark to that if I may be permitted.

Q. Certainly.

A. It is this; that owing to the special character of the business of the Pullman Company and the necessary intricacy of its accounts, it is impossible in my opinion for a thoroughly competent man in other respects, who is entirely unfamiliar with the business of the company to come to a competent judgment of many of the matters of account of the company, it can only be done through experience in the company's business.

Q. You were examined at some length concerning certain mileage, that appears on your ledger as charged against the C., I., St. L. & P., principally for items of mileage charged against that road, for cars running in 1884; were those mileage charges intended to be for mileage of all the cars run over that entire road?

A. I cannot answer that question without ascertaining the facts.

882 Q. Can you explain any further why there ceased to be any longer these small items of charges for mileage in 1885?

A. Against the C., I., St. L. & C.?

Q. Yes.

A. I would have to ascertain the facts to explain that.

Q. Will you converse with Mr. Bird and see if you can arrive at some conclusion in regard to that?

(In response to the call upon Mr. Robertson to produce the bills of Harlan-Hollingsworth Company and Bowers, Dure & Co., the answer to which he has given, Mr. Johnson states that the bills are as follows:)

Harlan-Hollingsworth Company, repairs to Monte Christo, dated February 17, 1879; repairs to Chatauqua, February 21, 1879; repairs to Calera, March 12, 1879; Brevoort, August 19, 1878; Maine, December 27, 1878; Brighton, September 1, 1879; Comanche, December 20, 1878. Bowers, Dure & Co., repairs as follows: Saturn, May 22, 1879; car 248, May 22, 1879; Fitchburg, June 8, 1879; Connecticut, August 1, 1879. Harlan-Hollingsworth Company, Caspion, May 7, 1879.

Mr. Johnson says he will call for these on the argument of the case.

Q. Can you answer the question which was left unanswered while you made an examination?

A. Yes, sir; the mileage charge referred to in the question was not on all the cars operated on that road, and the reason of the discontinuance of the amount charged was because the line was discontinued early in 1885.

883 Q. The line on which this mileage was charged on the books?

A. Yes, sir.

Q. Was that mileage then charged on a particular line which ran over the C., I., St. L. & C.?

A. Yes, sir.

Q. Can you tell me what line it was?

A. It was between St. Louis and Cincinnati.

Q. Then it was not over the whole of the main line of that road?

A. No, sir.

Q. Will you please give the result as near as you can, of the operation of the buffet and hotel service on the Pennsylvania railroad lines during the year ending July 31, 1885, being what is heretofore called "the commissary service"?

A. There was an approximate loss of $185.58.

Q. The repairs on the L., C. & L. road, under consideration, are arrived at by multiplying the number of miles run by cars on that road by three, being at the rate of three cents per mile?

A. Yes, sir.

Q. That calculation was made on the exact number of miles performed on that road, as furnished you by Mr. Bird?

A. Yes, sir.

Q. The question has been asked you about the $37,000 charged by you in the statement first presented by you on account of repairs on thirty-five parlor cars operated on the Pennsylvania road; do you know up to what time these cars were retained by the Pennsylvania road on a maintenance basis?

A. Up to the termination of the old contract.

884 Q. Then they were never based on a mileage basis by the Pennsylvania road?

A. They were not.

Q. At the time of the expiration of the old Pennsylvania contract, it has been stated, an estimate was made of the amount necessary to put these cars in proper repair—that is, the repairs they

would be in had the Pennsylvania road properly maintained them; am I correct in that?

A. You are.

Q. State what amount that was?

A. $80,000.

Q. Then that $80,000 was to make back repairs?

A. Under the old contract, yes, sir.

Q. Were those cars from time to time shopped for such repairs?

A. Some of them, yes, sir.

Q. About how many?

A. I think twenty, or twenty two or three.

Q. Were they remodeled at the same time of the general shopping?

A. To the best of my knowledge they were.

Q. Then, there are twelve or thirteen cars which have not yet had their quota of the $80,000 expended upon them?

A. There are some twelve or thirteen not remodeled during that period.

Q. Did those twelve or thirteen cars have their share of the $80,000 expended upon them during that period?

A. They did not.

885 Q. Do you know whether the balance of the thirty-five, that is twelve or thirteen, have, since the date of the statement which you presented in regard to them, had put upon them these repairs provided by the $80,000 fund, and been remodeled?

A. I think they have not, certainly not all.

Q. So that the $80,000 fund is still not all expended?

A. That is the case.

Q. These cars, it appears, were from time to time withdrawn from the Pennsylvania service?

A. Yes, sir.

Q. How did you arrive at the mileage per month these thirty-five cars performed on the Pennsylvania system before they were withdrawn under the new contract?

A. By taking the length of time between the 1st of February, 1885, and the date on which they were withdrawn from the Pennsylvania service, and adding these various times together, I find the total of 297 months and nine days, approximately.

Q. That is, the cars were operated under the Pennsylvania contract on an average of from eight to nine months?

A. Yes, sir.

Q. Is it to the operation of those cars for that average period that you charged the $37,000 of repairs you have mentioned?

A. It is.

Q. Is this $37,000 an actual expenditure, or an estimated one by you?

A. It is an estimated one.

886 Q. You have stated that the sum given for the operating and maintenance of cars properly chargeable to the Pennsylvania road during the seventeen months under consideration is $570,482.86; you have testified you arrived at that by

dividing the total operating and maintenance of the division by the number of cars required to operate the division and multiplying it by the number of cars required to operate the Pennsylvania road; am I correct in that?

A. Yes, sir.

Q. Such calculation would not give the sum of $570,000 there set down, would it?

A. No, sir.

Q. What did you add to the result of that calculation in order to get the sum of $570,000?

A. I added $28,109.64.

Q. On account of what?

A. On account of the excess in cost of the car-cleaning due to the Pennsylvania lines, which sum was not included in the total operating and maintenance expenses referred to of the Central division.

Q. Excess over what?

A. Excess of cost over the amount received from the Pennsylvania Company for cleaning.

Q. What was the total amount expended for car-cleaning on the cars required to operate the Pennsylvania lines during the seventeen months under consideration.

A. $69,109.64.

Q. How much have you credited upon that as received from the Pennsylvania Company under their agreement to pay $1,500 a month?

A. $25,500, which is seventeen months at $1,500 a month.

887 Q. In your calculation of what the gross operating and maintenance expenses were, did you not include some charges for car-cleaning?

A. I did.

Q. Have you deducted them also from the $69,000 you mention?

A. Yes, sir; I have, $15,500.

Q. You say about $28,000 for car-cleaning to be the result of the calculation before mentioned?

A. Yes, sir.

Q. Was any part of that $28,000 so added, included in the gross sum for operating and maintenance expenses in the Central division?

A. It was not.

Q. What are the elements of cost in car-cleaning?

A. Principally labor and some small amount of material.

Q. Was all of the $28,000 expended for car-cleaning upon cars on the Pennsylvania lines?

A. It was.

Q. Was the amount of which the $28,000 is a net excess all expended for car-cleaning upon cars upon the Pennsylvania lines?

A. It was. In reference to this last inquiry I would like to get some information outside? After examination I wish to add to that answer, while it is practically right, it is not actually so for this reason. The expense of $66,214.61 was our disbursement for the

cleaning of cars which touched the Pennsylvania system; that was billed against the Philadelphia clearing-house, and as the
888 result of their distribution we had to pay the whole amount and $2,895 in addition, which total I have practically against the Pennsylvania lines.

Q. Your saying that its being paid into the Philadelphia clearing-house, and you being charged some $2,000 additional means you were chargeable with certain cleaning done through the Philadelphia clearing-house, which you had not yourself paid for previously?

A. Exactly; besides our charges, there were other charges for other roads for cleaning on the Pennsylvania lines which we were responsible for.

Q. In the examination made of some bills of accounts of the Elmira shops, more especially one of June, 1885, being a bill of repairs to the car Vesta, a good many questions were asked you as to the distribution of the account between repairs and maintenance. Are you certain that no one of the items included in such a bill of repairs goes to both of the accounts, and so gets charged against the car twice?

A. Perfectly certain.

Q. Would an error in distribution, that is, setting the item to the wrong account, bring about the result of charging it twice as part of the expenses?

A. It could not possibly be the case; if any maintenance charges were charged by mistake into the special account it would favor the net earnings in the statement.

Q. When the Pennsylvania Company was under contract to maintain the cars I can see that it would be necessary to distribute these accounts properly and accurately; as the Pennsylvania
889 Company had to foot the bills of accounts for the repairs, now, however, when one corporation, the Pullman Company, pays the bills for repairs, operating, maintenance, and everything else, why do you keep these accounts separate?

A. As a matter of book-keeping and convenience, and as a matter of statistics.

Q. Does it in any way alter the gross expenses of the Pullman Company in regard to the operation of those lines?

A. It does not as to the total, except in so far as the system of arriving at the one may be different from the system of arriving at the other.

Q. The same party pays all the bills?

A. Yes, sir.

Q. Does it affect the net profit to the whole business of the Pullman Company?

A. No, sir.

Mr. LINCOLN: On your cross-examination, your attention was called to the fact that in your annual statement of the Pullman Company for the year ending July 31, 1885, in which the gross earnings in the Central division are stated at $1,581,636.74, and the number of cars operated at 247, making the gross earnings per car

$6,403.39; your attention also being called to the statement included in the statement first presented by you showing the gross earnings on the Pennsylvania system at $1,471,312.25 (I will not now correct the $312.25 to $812.25, as it is not material to this question), reducing that sum, being seventeen months' gross earnings, to the gross earnings for a year, as being $1,038,573,
890 dividing that last sum by 192 as the number of cars, made the average gross earnings of the latter number of cars about $5,409 per annum; I will ask you whether the number 247, taken in the first division, and the number 192 taken in the last division, refer to the same class of cars, and, if not, what distinction is there between them, or in other words, is the comparison made by using 247 for the divisor in the first instance, and 192 for the divisor in the other instance, a comparison made on the same basis?

A. It is decidedly not.

Q. Explain briefly why not?

A. The 192 is the number of cars required to operate the Pennsylvania lines, and the number used in the other case, 247, is the average number of cars operated in the division, and, therefore, the comparison is, by no means a fair one, and there is a further reason why it is not.

Q. When you say operated, do you mean actually operated, or kept ready for operation?

A. Actually operated, counted in the division. A further reason why it is not a fair comparison is that the periods of time are different; in my opinion you might as well compare, to use an old simile, an apple with a pear; there is no comparison.

Cross-examination resumed:

Q. In this parlor-car calculation, as I understand, in getting at the idea that the service was equivalent to one car for 297 months, you went on the principle of charging that car with the whole number of days which elapsed between the termination of the
891 Pennsylvania lease and its being actually taken away from the Pennsylvania Railroad service, whether the car run or not?

A. Yes, sir.

Q. Where a car belonging to the Central division had been repaired in the Central division, and had not been reported in the Central division, was specially chartered and its earnings were included as special earnings of the Central division for a year, who did pay the expense of porter and conductor?

A. You mean which division?

Q. Yes, sir.

A. That question I am not prepared to answer without ascertaining all the facts about the special service.

Q. Are you prepared to say the expense of porter and conductor was not charged in the division to which that car belonged and was taken from?

A. I am not.

Q. In response to my request, you have produced here bills for certain cars: Valparaiso, Hanover, Johnstown, Thracia, Alsatia, Etruria, Sacia, Asteroid, Lowell, Maine, Canton, Princeton, Monmouth, Milford, La Crosse, Calera, Ionia, Derwent, Sunberry, Gallatzia, and the numbers 353, 41 and 42; I will ask that these bills, which are bills of details of repairs, shall be appended to your deposition, but am willing that copies should be used instead of the originals, if you wish to keep the originals in the office.

Now, let me ask you a question concerning those cars. Will you please look at these bills and see whether any of the cases in
892 which there was maintenance of equipment, repairs to seats and backs, and the work which is included in your annual summarization under the head of maintenance of equipment for minor repairs, betterments, etc., wherever such work was done, whether it was not included in those items of expense for the year in which it was done, and whether those items were not additional to those included in the repair account?

A. That is the case, as I find them marked in these bills; take, for instance, the car Cresson as an example: the bill shows a total of shop costs, $6,784.06; the description of that is, repairs, $5,736.91; seats and backs, which was a technical shop designation of maintenance of upholstery, $703.21; and maintenance of equipment, $343.94. The cost of this bill, with the ten per cent. added here, is charged to repairs, maintenance of upholstery and maintenance of equipment, according to those figures.

Q. And would swell those items during the period in which those things were done?

A. Yes, sir.

Q. Be kind enough to look up, as far as you can, the orders for those bills, the shop orders for the work, in order to complete your deposition, and find, if possible, the two or three missing bills; what I want to get is the orders to the shop which indicate the general character of the work to be done preliminary to its doing; I will ask you to annex those orders, or copies, as part of your deposition.

893 On this fifth day of January, A. D. 1888, appeared F. C. N. Robertson, the witness above examined, and for answer to the interrogatory last above shown, said:

A. You have asked me to attach to my deposition copies of bills showing details of repairs to cars "Valparaiso," "Hanover," "Johnstown," "Thracia (353)," "Alsatia," "Etruria," "Dacia," "Asteroid," "Lowell," "Maine," "Canton," "Princeton," "Monmouth," "Milford," "La Crosse," "Calera," "Ionia," "Gallatzin," "Derwent," "Sunbury," "353 (Thracia)," "41" and "42."

I am unable to find such a bill for the "Gallatzin," but will attach to my deposition as Exhibit A, copies of such bills of details of repairs for all the other cars named, for the dates referred to by you. The two bills for the "Calera" appear as for car "Lodore," the name having been changed about the time of these repairs.

The bills for car "Thracia" and "353," are for only one car, the

"Thracia" being numbered "353." The repairs on this car extended over two months, hence, the fact of there being two bills, each of the bills representing the work done on it in one month.

There are two bills of repairs for the cars "Calera," "41', and "42," for the same reason.

A summary of the bills of repairs shown in my Exhibit A, is as follows:

894 Name of car.	Date shopped.	Date completed.	Amount of repairs.
Valparaiso.....	Aug. 25, 1885	Nov. 23, 1885	$7,229 17
Hanover	Aug. 19, 1885	Nov. 28, 1885	4,614 18
Johnstown..	Oct. 26, 1885	Feb. 5, 1886	4,165 77
Thracia (353).....	Feb., 1886	....	2,010 64
Alsatia	Dec. 31, 1885	Feb. 11, 1886	2,399 55
Etruria..... ..	Dec. 26, 1885	Feb. 20, 1886	2,780 76
Dacia	Oct. 17, 1885	Dec. 23, 1885	4,316 93
Asteroid.....	Oct. 17, 1885	Dec. 14, 1885	4,187 33
Lowell	Sept. 22, 1885	Feb. 11, 1886	4,203 36
Maine.....	Oct. 13, 1885	Dec. 14, 1885	4,381 75
Canton	Aug. 22, 1885	Nov. 10, 1885	6,107 90
Princeton	Aug. 22, 1885	Nov. 3, 1885	6,491 94
Monmouth	Sept. 29, 1885	Feb. 6, 1886	3,931 12
Milford.....	Nov. 3, 1885	Jan. 23, 1886	7,158 14
La Crosse	Nov. 9, 1885	Dec. 28, 1885	5,525 98
Lodore.....	Nov., 1885	.....	3,279 35
Lodore.....	Dec., 1885	....	3,839 68
Ionia	Nov. 10, 1884	M'ch 24, 1885	8,785 91
Derwent.....	July 25, 1885	Aug. 19, 1885	1,337 36
Sunbury..... ...	Nov. 1, 1884	M'ch 18, 1885	8,778 53
353 (Thracia)	M'ch, 1886	.....	1,836 51
41 (St. Mary's)	Feb., 1886	.....	2,089 60
" "	M'ch, 1886	.....	5,326 10
42 (St. Augustine).	Feb., 1886	....	1,976 06
" " .	M'ch, 1886	.....	5,373 84

You have also asked me to attach to my deposition the original shop orders for the above bills of repairs, or copies of the same.

I have been unable to find such orders for cars "Thracia," "Calera," "Ionia," "353," "41," and "42."

I attach as Exhibit B to my deposition, copies of the shop orders or "reports of repairs needed," relating to the other cars named, corresponding to the repair bills shown in Exhibit A.

F. C. N. ROBERTSON.

895 (The commissioner annexed, at this point, the contract with the Baltimore and Ohio Railroad Company, referred to on

page 663 of this volume, but not made an exhibit or introduced in evidence in this case, and therefore not printed here.

Robertson's Exhibit A is also annexed. It consists of 171 pages of small details of repair bills, including figures, prices, etc. It has not been considered necessary to print it.

Robertson's Exhibit B, consisting of thirty-eight pages, has not been printed for the same reason.)

896 *Testimony Taken Before Samuel Bell, Esq., Examiner, etc.*

SATURDAY, *December* 24, 1887—1.30 p. m.

Present: Mr. Isham, for complainants; Mr. Johnson, for defendants.

JAMES H. SMITH, having been duly sworn, was examined as follows:

By Mr. ISHAM: Where do you reside?

A. In Pullman, Illinois.

Q. What is your occupation?

A. I am private secretary to the president of the Pullman's Palace Car Company, in the employ of that company.

Q. How long have you been in that relation to Mr. Pullman?

A. In that particular relation about six years.

Q To what extent does your business, in that relation, call upon you, or occasion you to be with him in his goings about and in the transaction of his business?

A. At this time, I am not called upon to travel with him at all.

Q. How has it been in the past?

A. In the past, for four years I was with him everywhere.

Q. During what period did that four years cover?

A. From possibly 1881 or 1882 to 1886.

Q. Do you remember being with him at interviews with
897 the representatives of the Central Transportation Company, the respondent here, in negotiations concerning a lease of the Pullman Company with the Central Transportation Company, and their relations with the Pennsylvania railroad?

A. Yes, sir.

Q. Over what period did those interviews continue, and at how many of them were you present?

A. I think they commenced possibly in the fall of 1883, and continued up to the spring of 1885. I was with Mr. Pullman at all of them.

Q. Do you remember any discussion between the representatives of the Pullman Company, and those of the Central Transportation Company, on the subject of the annulling of that lease?

A. Yes, sir, it was discussed frequently.

Q. Please state generally, as well as you can remember, when the discussions on that subject occurred, what they were, and with whom.

A. The first discussion, I remember distinctly, was between what

was known as the Pullman committee of the Central Transportation Company and Mr. Pullman and Mr. Bacon, and, I think, General Porter; that was in the spring of 1884; I should say between March and May—possibly April.

Q. Where was that interview or discussion held?

A. At the Continental hotel.

Q. Who was present besides the parties that you have named—that is, who was present on the part of the Central Transportation Company, composing that committee?

A. I do not know that I can remember all who were there, but I do remember Mr. Lane, Mr. Wright, Mr. Howard, and, I think, Mr. Bingham.

898 Q. Do you remember anything of Mr. Lockhart or Mr. Wolverton being there?

A. No, I would not undertake to say that, because they were not present at so many of the interviews as the other gentlemen.

Q. Can you approximate that date more closely?

A. No, I could not give you exactly the date. I cannot give you any more than that it was in the spring of 1884, and my best recollection tells me that it was in April.

Q. Do you know anything about the circumstances that led up to that meeting?

A. I remember that Mr. Pullman, in his office in New York, had a very full discussion with Mr. Bacon with reference to the Central Transportation matters in general, and at that time he stated to Mr. Bacon that he proposed to cancel or to annul the lease, and that he desired him to go to Philadelphia with him on the following day, to meet the committee of the Central Transportation Company.

Q. Did they come?

A. They came on the next morning.

Q. Did you come with them?

A. I came with them, yes, sir.

Q. What occurred on the way, if anything?

A. Mr. Pullman called upon me for the Central Transportation lease, or a copy of it.

Q. Why did he call upon you? Did you have it?

A. I had it with me.

Q. Please explain how you came to have it?

A. Because it was my duty to have charge of such papers

899 as Mr. Pullman might want or require.

Q. That is, when he was travelling?

A. When he was travelling. He called upon me for the lease which I handed to Mr. Pullman or Mr. Bacon, and Mr. Bacon, I remember, read the lease or re-read it, for he had read it before, and it was discussed on the way over between Mr. Bacon and Mr. Pullman, and possibly General Porter, who, I think, was along.

Q. Do you remember whether Mr. Pullman asked Mr. Bacon for an opinion upon any element of that lease; and if so, what?

A. I remember that Mr. Pullman did ask Mr. Bacon for his opinion of the lease.

Q. On what part of it?

A. I do not remember what part particularly, but I remember that the discussion turned upon, I think, section or clause 8th, of the lease which gave the Pullman Company the option or privilege under certain conditions to terminate the lease.

Q. Come down now to the meeting at the Continental hotel. What time was that, and what occurred there?

A. I think it was held in the evening of that same day, and I remember only a general discussion with reference to the lease. The discussion, however, turned upon the cancellation or annulment of the lease.

Q. What was said on that subject, and how did it arise?

A. I cannot undertake to repeat the conversation or the words that were spoken.

900 Q. Did Mr. Pullman make any statement on that subject that you recall in substance?

A. I do recall that Mr. Pullman stated very emphatically that he had made up his mind to cancel the lease.

Q. Was there anything said on that subject by the other parties?

A. I remember also that Mr. Lane particularly expressed himself as being very much opposed to the cancellation of the lease, stating in a general way that he considered that it would not be advantageous to either company to have the lease canceled. His desire was to have Mr. Pullman go ahead and make a contract with the Pennsylvania Railroad Company, if it was possible for him to do so.

Q. Was there any result arrived at at that meeting or any conclusion arrived at?

A. No; not that I understood. I do not understand that any conclusion was arrived at. In fact, I do not remember just in what way the meeting broke up.

Q. Do you know anything of the subsequent preparation, by Mr. Pullman's directions, of any formal notice carrying into effect his purpose of annulling that lease; if so, state what you know on that subject?

A. I remember that after we had returned West (Mr. Pullman, Mr. Bacon and myself) that Mr. Pullman took up further with Mr. Bacon the question with reference to the preparation of a notice to the Central Transportation people annulling the lease. I remember that a letter was prepared.

901 Q. You say "took up the question." What did he do?

A. He told Mr. Bacon to prepare such a letter as might be necessary. I remember that Mr. Bacon did prepare such a letter; that it was discussed by Mr. Pullman and Mr. Bacon, and that it was left on Mr. Pullman's desk in Chicago.

Q. You say "such a letter." Please state what you mean by "such a letter"—a letter to what effect?

A. A letter which was a notice to the Central Transportation Company of Mr. Pullman's intention to terminate the lease of the Central Transportation Company.

Q. State what became of it, and what was done?

A. It was placed on Mr. Pullman's desk after it had been fully

discussed, and it remained there for some time. I would not undertake to say how long—perhaps a week or more.

Q. What was afterwards done in that matter?

A. I never knew what became of that letter after it was removed from his desk.

Q. I say what was done afterwards in that matter?

A. The matter, as far as I have any knowledge, rested at that letter having been placed on Mr. Pullman's desk at that time.

Q. Did the subject of that letter ever come up again?

A. It did. The subject of that letter came up in a meeting held in the Continental hotel between Mr. Pullman and Mr. Davy.

902 Q. Who was Mr. Davy?

A. He was the auditor of the Pullman's Palace Car Company. Also Mr. Bacon, and I think, General Porter, and my recollection is that Judge Lochrane was present, on the part of the Pullman's Palace Car Company, and what was known as the Pullman committee of the Central Transportation Company.

Q. You mean that they were present?

A. Yes, sir; or certain members of the committee.

Q. What was the date of that meeting, as nearly as you can place it; give your best recollection?

A. As near as I can recollect it was in October or November of 1884.

Q. Where was it?

A. It was held at the Continental hotel.

Q. Do you remember in what room it was held?

A. I am always puzzled as to the points of the compass in Philadelphia, but it was held on the parlor floor in the parlors, on what I call the Eighth-street side. I think the number of the room was 20 or 18, I am not positive which.

Q. Was it the extreme room on that corridor?

A. Yes, sir.

Q. The farthest from Ninth street?

A. Yes, sir.

Q. Fronting on Chestnut street?

A. Yes, sir; fronting on Chestnut street.

Q. State what occurred at that meeting?

A. I remember having heard some of the old questions discussed. I remember that Mr. Pullman called upon me for the letter

903 which Mr. Bacon had prepared in Chicago, for a copy of the letter. He asked really for the letter. I searched amongst my papers, but failed to find it. While I was searching Mr. Bacon came into the other room, which was Mr. Pullman's bed-room, and stated that he had the memoranda from which he wrote the letter, and at once took his package of papers, searched through them, and found the memoranda which he said was from which he wrote the letter.

Q. Was it a memoranda or draft of the letter?

A. It was a draft of the letter in pencil. In fact, I think he had two drafts of a letter.

Q. Was it one document or different documents?

A. No, I think he had two drafts. From one of them he had written the letter. I do not know which.

Q. Then what occurred?

A. Mr. Bacon afterwards came out and spoke to Mr. Pullman. After that he read a pencil memorandum; one of the ones he had, which he said was the one from which he wrote his letter.

Q. Read it to whom?

A. He read it to the whole assembly.

Q. By direction?

A. By direction of Mr. Pullman. I took it that Mr. Bacon read it, because he could read his writing possibly better than Mr. Pullman could.

Q. Then, by Mr. Pullman's direction, Mr. Bacon read to that meeting the original draft, if I understand you right, from which the formal letter announcing his purpose to annul the lease had been made?

904 A. Yes, sir.

Q. State what followed.

A. I remember very distinctly on that occasion that Mr. Lane, who seemed to be the spokesman, stated very emphatically that he desired Mr. Pullman to reconsider it—to withdraw his intention, if you please, and to go ahead with his negotiations with the Pennsylvania Railroad Company for a new contract. He stated, as he had stated before, that he considered that it would be for the interest of both companies to have the negotiations proceed.

Q. What negotiations do you mean?

A. With the Pennsylvania Railroad Company and the securing of a contract with the Pennsylvania Railroad Company if possible.

Q. Did any other than Mr. Lane say that; and if so, whom?

A. I think Mr. Wright spoke also, and I think Mr. Howard spoke in the same tenor; but Mr. Lane I remember very distinctly on that occasion.

Q. Do you remember any claim of Wright's being made by the representatives of the transportation company as to the cars in case the lease should be annulled?

A. I remember that Mr. Wright raised the point that in case of the termination of the lease between the Central Transportation Company and the Pullman Company, the Central Transportation Company would have the right and privilege of taking from the assignment of cars to the Pennsylvania Railroad Company any cars which they might choose to select. Mr. Pullman asked him

905 at that time if he understood him correctly that he considered he would have a right to go onto the Pennsylvania Company's lines and take the newest cars which we had just put on. Mr. Wright said that it was his opinion that the Central Transportation Company had such a right.

Q. State whether any further discussions and negotiations followed upon that, and if so, what the results were, so far as you know, whether the parties came to any conclusion.

A. The negotiations were carried on, and from that point Mr.

Pullman renewed his negotiations with the Pennsylnania Railroad Company, the result of which was the making of a contract.

Q. Referring to this subject of withdrawing from his purpose of annulling the lease of which you have spoken, state whether or not there were any further negotiations on that subject, and what conclusion was come to.

(Objected to as leading.)

A. I do not remember the words of the conversation, but the understanding was this.

(Mr. Johnson objects to the witness stating an understanding which is his inference, and insists upon it that he shall state the substance of what was said, and the persons by whom it was said.)

By Mr. ISHAM: State the substance of what was said.

A. The substance of what was said, as near as I can recollect, was, that if Mr. Pullman would withdraw his determination to cancel the lease, the Central Transportation Company would
906 take whatever proportion of the net earnings might accrue from any lease made with the Pennsylvania Railroad Company.

Q. You do not mean lease, do you?

A. Any contract that might be made with the Pennsylvania Railroad Company, as might be a fair proportion, and after that meeting the negotiations were conducted, as far as I remember, on that understanding.

Q. What was the subject-matter, then, of the subsequent negotiations between the Pullman Company and the Central Transportation Company?

A. As far as I can recollect the negotiations were in the nature of determining what the possible net earnings would be from the proposed contract with the Pennsylvania Railroad Company.

Q. As to what the amount of those earnings would be?

A. As to what the amount would be, and what would be a fair proportion to the Central Transportation Company.

Q. In discussing this proposition of continuing the negotiations with the Pennsylvania Railroad Company, and getting a railroad contract and paying to the Central Transportation Company a share of the net earnings that could be made under it, was there, in the discussions between the parties, any reference to any terms of the lease on that subject; and if so, what?

A. Do you mean any discussions with the Central Transportation Company?

Q. I mean discussions between the Pullman people and
907 the Central Transportation Company people at this meeting. Did their discussions relate to any clauses of the lease with the Central Transportation Company?

A. I do not remember, except in the discussions with reference to the termination of the lease. The only clause I remember distinctly was clause 8 of the Central Transportation lease.

Q. I am calling your attention to the proposition to negotiate a

new contract and pay a share of the earnings. In the discussions between the parties, was that proposition based upon any provisions of the lease, or not?

A. The proposition and the conversation was that, under the terms of the lease, they were entitled to a fair share of the net earnings.

Q. So that the proposition and arrangement was made with reference to the clause of the lease on that subject?

A. Yes, sir.

Cross-examination by Mr. JOHNSON:

Q. This letter that you say was left lying on Mr. Pullman's table and that you last saw there was put there, according to your best recollection, some time in April, 1884?

A. No, sir; I should say it may have been the latter part of April.

Q. And nobody ever told you in any way to take possession of that letter or assume any care of it?

A. No, sir.

Q. For aught you know it may have gotten in the waste-
908 paper basket or in a drawer? You do not know anything at all about its subsequent history?

A. I know nothing about it after it left Mr. Pullman's desk.

Q. And it was never recurred to until some time in October or November?

A. No; not to my recollection.

Q. Then, when it was recurred to, Mr. Pullman, who had never asked you to take any charge of it in any way, shape or form, called on you to produce it?

A. Yes, sir.

Q. What was your answer?

A. My answer was to make a search for it.

Q. You knew you had never taken charge of it?

A. Oh, no; I did not know at that time.

Q. You had never been asked to?

A. I know that; but I did a great many things that I was not asked to do.

Q. But you also knew then, as well as you know now, that the last you had seen of the letter it was lying on his table?

A. No; I did not know it at that time.

Q. What has enabled you to remember it, then?

A. To remember that that was the last I saw of it, do you mean? Simply because it is my recollection. That is the last recollection I have of it.

Q. Then nothing was said about that cancellation or notice of cancellation in any way, shape or form, after that at any time, except at this one interview at the Continental, which occurred in October or November?

(Objected to, as the witness has not so stated.)

909 A. It may have been discussed very frequently during that time.

Q. Have you the slightest recollection of hearing the subject in any way, shape or form broached in the interim?

A. I could not recollect whether it was discussed or was not.

Q. As far as you have a memory, you have no recollection whatever of ever hearing it discussed until this comparatively distant interval of time in October or November?

A. No, not to my recollection.

Q. State how the subject of cancellation arose. What were the parties talking about—the Pullman committee and Mr. Pullman and the gentlemen who accompanied him; that is, what were they talking about immediately before the subject of cancellation arose?

A. I could hardly undertake to state what they were talking about.

Q. My object is to lead up to that by your giving us, as well as you can recall it, the preliminaries thereto.

A. If I should undertake to answer that question, according to the best of my recollection, I should say that it was a conversation, or rather it was a continuation of the conversation, or a similar conversation to that held in the meeting of April. It was about the same general conversation.

Q. A conversation means that people are talking—expressing some idea, or very often some lack of idea. I want to know, as well as your memory will recall it, whether this subject of a can-

910 cellation dropped like manna from the heavens, or whether there was some preliminary feeding before it came upon the floor.

A. I could not give you any part of the conversation which occurred previous to that.

Q. Then bring me down just to when your first recollection seizes upon this subject-matter and tell me your best recollection of what was said concerning it, and who said it.

A. The point that I now remember is the request made upon me by Mr. Pullman for the letter Previous to that time, I do not think I could give you any portion of the conversation. I immediately searched for the letter amongst my papers of which I had a great number.

Q. Did you search in that room or did you go into another room?

A. I went into Mr. Pullman's adjoining room.

Q. About how long a time do you think you consumed in that search?

A. Oh, possibly ten minutes.

Q. Then you went out of the room for about ten minutes?

A. I went out of the room for about ten minutes.

Q. And left these parties together in the room?

A. Yes, sir.

Q. Then when you came in what was said substantially?

A. When I came back I came back after Mr. Bacon had found his papers.

Q. Then all that occurred in your absence—the finding by Mr. Bacon of the papers?

911 A. No; Mr. Bacon was in the same room with me.

Q. He was hunting also, was he?

A. He was hunting also. That is, after I had failed to find my paper Mr. Bacon came in and stated that he had the original from which this was written.

Q. When you came back into the room was Mr. Bacon in the room with the committee and with Mr. Pullman, or not?

A. I followed Mr. Bacon back into the room.

Q. Did he go out to hunt also with you?

A. He went out after I had been out.

Q. While you were out and were hunting he came out?

A. Yes, sir.

Q. Then he took to hunting too, did he?

A. He looked through his papers; not through mine.

Q. Then you do not know what he had said preliminary to his leaving the room and coming to hunt?

A. No, sir; I do not.

Q. Therefore, what you have said about his saying that he had a draft and all that is what somebody else told you?

A. Not at all.

Q. Who said that?

A. Mr. Bacon told me that himself.

Q. He came into the room then. What did he tell you?

A. He told me that he had his original papers.

Q. Then that was not told to the committee; that was told to you?

912 A. That was told to me; yes, sir.

Q. Then, as far as Mr. Bacon and the committee were concerned, in reference to that he came into the room, or returned into the room after you had returned to it, with the paper?

A. He had returned to the room where the committee sat, do you mean?

Q. Yes, after you returned unable to find it.

A. No, sir; I came in the room after Mr. Bacon came in. He returned to the room, I following him, he having brought his paper. We came in together.

Q. How long a time elapsed between his coming into the room and your following him?

A. No time at all, because we came in together.

Q. You followed immediately?

A. Yes, sir.

Q. Then what occurred?

A. Mr. Bacon, if I recollect rightly, showed the papers to Mr. Pullman, and immediately turned and read the paper which he held in his hand.

Q. That was an unsigned paper, of course?

A. I do not remember whether it was unsigned or signed.

Q. You remember hearing it read? Do you remember hearing any signature to it read?

A. No, sir.
Q. Did you see the paper?
A. I saw the paper; yes, sir.
Q. Do you remember whether it was signed or not?
A. No, sir; I did not read the paper. I saw the paper.
913 Q. You mean that you saw it at a distance?
A. I saw it at a distance. I do not remember what was on the paper.
Q. You remember what was read out?
A. I remember the substance of it.
Q. Did he read out any signature?
A. No, sir; not that I remember.
Q. What was the substance of what he read?
A. The substance was briefly that the Pullman's Palace Car Company thereby gave their notice—their notice in writing—to terminate the Central Transportation Company's lease in accordance with the privilege contained, I think, in clause 8th thereof.
Q. He finished reading it. What then was said and by whom, substantially?
A. As I say, Mr. Lane, I think it was, stated very emphatically that he considered it would not be advantageous for either company to pursue that course; that it would be far better for Mr. Pullman to go ahead and make whatever kind of contract he could with the Pennsylvania Railroad Company, and that they would assume or take such proportion of the net earnings from that contract as would be reasonable and fair.
Q. That was the substance of what Mr. Lane said?
A. Yes, sir.
Q. State the substance of what any other person on behalf of the Pullman committee said, naming the person.
A. I think Mr. Howard spoke in the same tenor.
914 Q. Substantially, what is your recollection of it?
A. I remember Mr. Howard spoke, but not so emphatically as Mr. Lane.
Q. Substantially, what did Mr. Howard say?
A. Mr. Howard said that he considered it would be unwise to pursue a policy of that kind.
Q. That was the substance of what he said?
A. Yes, sir.
Q. What was the substance of what Mr. Wright said?
A. Mr. Wright stated in a general way that he considered that that would not be an advantageous thing to do or a desirable thing to do, and that if it were done, the Central Transportation Company would have a right to take such cars as they might choose from what they called the Pennsylvania assignment.
Q. That was the substance of what Mr. Wright said?
A. Yes, sir; as far as I remember.
Q. Have you any recollection whatever that any other member of the Pullman committee spoke at all?
A. No, sir.
Q. Now give the substance of what Mr. Pullman or General

Porter, or Mr. Bacon, or any other of the gentlemen acting on behalf of the Pullman Company, said concerning this matter?

A. I could not repeat the conversation.

Q. Give the substance of it?

A. The conversation turned upon the net earnings of the contract—of the proposed contract. The discussion generally
915 was with reference to what the possible earnings would be, and as to what would be a fair proportion to the Central Transportation Company. In a general way it was with reference to the earnings under the contract.

Q. And what in dollars and cents would be a proper sum to be paid in the future?

A. Yes, sir.

Q. They were trying to get, then and there, at some fixed sum of money that would fairly represent what should be paid in the future, were they not?

A. No; it did not turn so much on a fixed sum, I think.

Q. Weren't they talking of a fixed sum?

A. They had been talking of fixed sums since spring.

Q. Was there any time at which there was any other discussion, excepting as to the amount of a fixed sum?

A. Yes, sir; I don't remember that there was any other discussion with reference to any specified amount or a basis on which any amount might be fixed, except that which would be fair. They stated this: the conversation was that the Central Transportation Company, under their contract should have what would be a fair proportion. That was the basis.

Q. They were trying to get at, from figures, what would be a fair proportion?

A. Yes, sir.

Q. Have you stated the substance of all that occurred concerning the proposed cancellation of the lease, and any agreement concerning the same at that interview with the committee?

916 A. Yes, sir; except, perhaps, that the conversation immediately turned, as I stated, upon what would be a fair proportion of the net earnings, and I should say the understanding generally was that Mr. Pullman would go ahead and endeavor to make a contract with the Pennsylvania Railroad Company.

Q. Then, that, added to what you have before stated, was the substance of what was said at that interview?

A. As far as I can remember.

Q. And when you have talked about agreement, understanding and the like, it is your inference of an agreement or an understanding from what was said, the substance of which you have given us?

A. Yes, sir.

Q. Now let me see if you can throw any light upon a matter we have been trying to get at. What was suggested as being a fair proportion or percentage of the future earnings, to be paid?

A. I cannot tell you what particular figure was suggested.

Q. Was it to be all of the net earnings or part of the net earnings,

and if part of the net earnings, what part was talked about—eighty, seventy, sixty, fifty, forty—what per cent.?

A. I don't know whether any percentage was mentioned or not; but the understanding seemed to be that they would take a portion, or whatever proportion would be fair. I did not understand from that that it meant all.

Q. A fair proportion is as differing as the judgment of anybody talking. Did anybody make any suggestion as to what the
917 idea was of a fair proportion? For instance, did Mr. Pullman make any suggestion as to what would be, according to his idea, a fair proportion to be paid?

A. I do not think so.

Q. Did any members of the committee make any suggestion at all about a fair proportion?

A. It may have been done, but I don't remember it. I don't remember that any suggestion at that meeting was made.

Q. Was any suggestion at any meeting made by anybody, as to what would be a fair proportion?

A. I do not know that they ever attempted—that they made any special figure or set any special figure as being a fair proportion.

Q. Was not what they did always to try to get at a fixed sum?

A. They did try to get at a fixed sum, or a sum which would be, as I should say, unvarying.

Q. Upon what basis did they talk when they were trying to get at that fixed sum? For instance, you remember that some one on behalf of the Central Transportation Company proposed that it ought to receive $110,000 a year, do you not?

A. Yes, sir; I remember a sum of $145,000 a year.

By Mr. ISHAM:

Q. Was that at this meeting?

A. No, sir.

By Mr. JOHNSON:

Q. Before or after?

A. I think it was before. I remember also another sum of $110,000; I remember also another sum, which was discussed of, I think, $88,000; but just in what way they were discussed, I would not be able to say.

918 Q. Did anybody ever, when naming those various figures, say fair proportion or say figures—"These are the figures we ought to get," or "These are the figures we would be willing to recommend to be taken"?

(Objected to as immaterial.)

A. I should say that those figures may have been offered by the party who made them, whoever that might have been, and that they were offered as their figures—as their idea of being what would be a fair proportion.

Q. Did they express any such idea? Did you ever hear anybody, in naming figures, express the idea, "This is a fair proportion"?

Was it not rather a statement of figures which they ought to receive?

A. No, I don't remember of hearing the fair proportion discussed with any figures, excepting that it may have been stated that that was a fair proportion.

Q. But you don't remember?

A. I don't remember.

Q. Did Mr. Pullman, at any of those meetings, say what his judgment was as to the probable net earnings from the future operations under the proposed new lease with the Pennsylvania Railroad Company?

A. No, sir; I don't remember that he did, because it was, as he stated, almost impossible to say what the net earnings would be under a lease which he proposed to make.

Q. Then, how on earth, if it was impossible at that stage
919 of the negotiations to know what would be the probable earnings, were they stating fixed sums, in dollars and cents, to be paid?

A. They had been stating fixed sums during all their negotiations.

Q. Before any idea was arrived at as to what was to be gotten from the Pennsylvania railroad?

A. Yes, sir.

Q. Then the fixed sums that were being put backwards and forwards were fixed sums irrespective of a calculation or estimate from the probable future earnings under the new lease?

A. I took it in this way; that the Central Transportation Company were endeavoring to get as much as they could under any possible new lease, and that they named sum after sum.

By Mr. ISHAM:

Q. You mean railroad contract?

A. Yes, sir; and that they named sum after sum. I remember very distinctly that it was stated that they would prefer to get $264,000 a year.

By Mr. JOHNSON:

Q. But was it not a fact that from the beginning to the end it was fixed sums that were bandied backwards and forwards?

A. Figures that I remember were fixed sums, of course.

Q. Wasn't it a fact that when the agreement, which we call conditional, and which the Pullman Company say was absolute, was arrived at it was *was* on the basis of a fixed sum to be paid?

A. What agreement do you refer to?

Q. The agreement that was put in writing in February, 1885.

920 A. Yes, sir, that fixed the sum, of course.

Q. Tell me what statement was made prior to that agreement in the conversations between the Pullman committee and Mr. Pullman as the probable net revenue from the Pennsylvania Railroad lease.

A. I could not do that. I could not give you any figures.
Q. Was a sum named as the probable net earnings by anybody on behalf of the Pullman Company; and if so, by whom?
A. It may have been, and if so, it would have been by Mr. Davy, the auditor.
Q. Did you hear at any time of any sum being named?
A. No, I did not.
Q. You were present practically at all the meetings, were you not?
A. I was in and out; yes, sir. I was not at all of them fully.
Q. Was there at any time any statement made by any one on behalf of the Pullman Company to the Pullman committee as to what in the past had been the net earnings under the old contract?
A. I remember that such statements were made, but as I had nothing to do with them, I do not remember what they were.
Q. By whom, Mr. Pullman?
A. They originated in the auditor's office.
Q. By whom were they communicated to the Pullman committee, by Mr. Pullman?
A. They were communicated, I think—some of them were
921 shown by Mr. Pullman and some possibly—they were taken up afterwards by Mr. Davy, and I remember at one time Mr. Goodman and Mr. Cottringer were going over some statements.
Q. Did you hear at all a figure named?
A. No; I may have heard it, but I don't remember what it was.
Q. You have no recollection as to it whatever?
A. No, sir.
Q. Those statements were in writing, weren't they?
A. I think they were. Yes, sir; they were.
Q. You were the custodian of them, were you not?
A. No, sir.
Q. How is it that they were not put with the other papers in your custody?
A. Simply because Mr. Davy had his papers, and Mr. Bacon had his papers, and I had mine.

By Mr. ISHAM:

Q. Those were Mr. Pullman's papers?
A. Yes, sir.

By Mr. JOHNSON:

Q. But the statements were in writing?
A. Yes, sir.
Q. What became of them?
A. I think they are in existence yet.

(Mr. Johnson calls for all statements at any time exhibited or communicated to the Pullman committee of the Central Transportation Company as to the net earnings under the old contract and as to the estimated earnings under the new contract.)

922 Q. When, substantially, were the terms of the lease which was ultimately signed by the Pennsylvania Railroad Co. and by the Pullman Co. arrived at?

A. I think they were arrived at fully on the day what we call the modified lease with the Central Transportation Co. was signed.

Q. That is not my question. My question was, when, substantially, were the terms, as finally reduced to writing, agreed upon?

Mr. ISHAM (to the witness): I will ask you to confine your statement to what you know of your own knowledge.

The WITNESS: Of my own knowledge, I do not know just what time they were arrived at.

By Mr. JOHNSON: You were present, were you not, at the interviews with the Pennsylvania Railroad Company?

A. I was there at some of them, and some I was not.

Q. Is it not a fact that the terms, as ultimately reduced to writing in the lease and supplemental lease, were arrived at and understood prior to the middle of October, 1884?

A. No, sir, they were not arrived at.

Q. How did the terms that were being discussed between the Pullman Co. and the Pennsylvania Railroad Co., in the early part of October, 1884, differ from the terms which were ultimately put into writing?

A. That I could not answer.

Q. Was there a substantial difference?

A. I take it that there was. I am not positive, however?

923 Q. Why do you say so?

A. Simply because the terms were not agreed upon at that time.

Q. But they were being discussed, and it was stated on behalf of the Pennsylvania Railroad Co. what they would do, was it not?

A. I do not know. I take it that they were not—that they had not fully met upon those.

Q. Is it your recollection that as late, say, as November, 1884, the Pennsylvania Railroad Co. had not stated the terms upon which they would renew the lease with the Pullman Co.?

A. That I would not be able to say.

Q. How do you fix as probably April, 1884, the time when Mr. Bacon prepared this form of notice?

A. Because I remember it was in the spring of 1884.

Q. Why spring? What is there that makes you certain that it was the spring? That is, what makes you certain that it was not March, 1884?

A. It may have been the latter part of March, or it may have been the first of May. I take it that it was between March and May, and, therefore, April.

Q. I turn to your testimony as given on a trial of a controversy between the Pullman Co. and the Central Transportation Co., and find at page 330 the following:

"I heard Mr. Pullman after this point had been raised of the insertion of something in the paper which would make it contingent on the ratification—Mr. Pullman stated emphatically to Mr. Lane

and to Mr. Bingham that under no consideration would he
924 accept the modification with that clause in. He said that his contract with the Pennsylvania road must be dependent upon a binding contract."

Do you remember that occurring in your former testimony?

A. Yes, sir.

Q. You were then referring to this written agreement of February, 1885, which the Pullman Co. claimed to be absolute, and which the Central Transportation Co. said was conditional on ratification by the stockholders.

A. I was referring to the effort made by Mr. Lane to insert in the modified lease a condition which would render it necessary to have it ratified by the stockholders.

Q. And you remember then that on that occasion, which was in February, 1885, Mr. Pullman said substantially, or in effect, that he would not make a contract with the Pennsylvania railroad—a binding contract—unless that contract was made binding also?

A. Yes, sir; that he could not afford to make a contract unless that contract was binding.

Q. Do you remember his going further and saying the reason why he could not do that, because if he did that the result would be that he would be bound to the Central Transportation Co.?

A. No, I do not remember any reason at all given.

Q. But you do remember the fact that he would not do the one unless the other was done?

(Objected to as immaterial.)

A. I remember the fact that he stated it.

925 Q. Do you remember testifying thus?

"Q. Then the substance of what Mr. Lane said was, 'The contract does not show any reference to the stockholders, and I want that reference inserted in it.' Now that was substantially what Mr. Lane said, was it?

"A. That was what he said as far as I can remember the words.

"Q. And Mr. Pullman was unwilling that there should be inserted in that contract such a reference?

"A. Most emphatically."

Q. Do you remember that testimony?

(Objected to as immaterial.)

A. Yes, sir.

Q. Was this opinion, of which you have spoken in your examination-in-chief, given by Mr. Bacon to Mr. Pullman upon the lease a written opinion, or an oral one?

A. Do you refer to that which he read in the meeting?

Q. No, not the notification, but his opinion. You have spoken about an opinion which Mr. Bacon gave to Mr. Pullman on the cars.

A. On the cars? It was oral.

Q. Was there a written opinion given at any time?

A. I do not remember of any.

Q. State what that opinion orally expressed in substance was.

A. The opinion, as far as I can remember it, was that he would have a perfect right to go ahead and annul the lease under the 8th section.

Q. Was that in the spring of 1884, that that occurred, or in October or November of 1884?

926 A. It was in the spring.

Q. Are you certain that either Mr. Wright or Mr. Howard made any observation at this meeting at the Continental in October or November, 1884, after Mr. Pullman spoke of canceling the lease, or after Mr. Bacon read his draft?

A. I am certain that Mr. Lane did.

Q. Are you certain that Wright or Howard did?

A. I am certain that Mr. Howard spoke, and I am certain that Mr. Wright spoke, especially with reference to the cars. I think Mr. Wright had stated the same previously.

Q. In any of those interviews did Mr. Pullman state in dollars and cents the amount that he would be willing to pay the Central Transportation Co. in the future?

A. I do not remember whether he did or not. He may have.

Q. In any of those interviews did he bind himself to go on and make a lease with the Pennsylvania Railroad Co., unless he saw fit to do so?

(Objected to as calling for a conclusion of law.)

A. I do not remember. I do not know that he did or did not.

Q. You did not hear him say any words by which he said that the Co. should go on and make a lease, did you?

A. I did not hear him say anything of the kind.

Q. Prior to this meeting at the Continental, in October or November, 1884, and at that time, and subsequently, there were ne-

927 gotiations for a fixed amount of rental to be paid by the Pullman Co. to the Central Transportation Co. in the future, were there not?

A. There may have been. I do not remember that those fixed sums were mentioned after that time. Certain fixed sums were mentioned, however, during all the negotiations.

Redirect examination by Mr. ISHAM:

Q. At these various meetings and interviews at which you were present, you were there solely in your capacity as Mr. Pullman's private secretary, were you not?

A. That is all.

Q. You were not there acting for the Pullman Co. in any other way?

A. No, sir.

Q. Nor in any way taking any part whatever in the negotiations or conduct of the business?

A. No, sir.

Q. The testimony which you give, is given simply as your recollection of what occurred, you being present in that capacity only?

A. That is all.

Q. Mr. Johnson asked you about certain written statements of earnings that would be made under the projected contract or new contract with the Pennsylvania railroad. Do you know that any statements were prepared and delivered—that is, statements to the Central Transportation Co.—that they were anything more than simply private notes and memoranda of whoever was engaging in the discussion?

928 A. I did not understand Mr. Johnson to ask me whether these statements were statements of the possible earnings. They were statements made, perhaps, of the past earnings or of certain operations or conditions of affairs. Those statements were used.

Q. You have called them statements. Were they formal documents presented to the Central Transportation Co., or simply notes and memoranda of the parties who were speaking for the time being?

A. They were simply notes of the auditor, for instance.

Q. They were not formal statements submitted to the transportation Co.?

A. No, sir.

Q. Of such notes or statements, or memoranda or figures, do you know anything about their subsequent history?

A. No, sir; because they were not in my keeping.

Q. Do you know whether any such notes or memoranda are in existence or not?

A. No, I do not know positively that they are.

Q. Who had them at the time, the auditor?

A. The auditor.

Q. That was Mr. Davy?

A. Yes, sir.

J. H. SMITH.

(Mr. Isham requests that the acts of assembly and articles of association constituting the charter of the Central Transportation Company may be considered in evidence, to which Mr. Johnson assents.)

Adjourned.

929 In the Circuit Court of the United States for the Eastern District of Pennsylvania.

PULLMAN'S PALACE CAR COMPANY *vs.* THE CENTRAL TRANSPORTATION COMPANY. } In Chancery. No. 44. October Sessions, 1886.

To John G. Johnson, Esq., defendant's solicitor:

Please take notice that on the 22d day of November, A. D. 1887, I will proceed in the above-entitled cause, to take the testimony of A. O. Bacon, before E. F. Best, a commissioner of the circuit court of the United States for the northern district of Georgia, at the office

of the said commissioner, in the city of Macon, in the State of Georgia, said deposition when so taken, to be used in evidence on the hearing of the above-entitled cause and upon any application and motion made to the court in said cause; and that the taking of said deposition will be commenced at 2 o'clock in the afternoon of said day, and the taking thereof will be adjourned and continued from day to day, Sundays excepted, at the same place until the taking of the same is completed.

The reason for the taking of the deposition as above noticed, is that said witness resides in the city of Macon, in the State of Georgia, more than 100 miles from the place of trial of said cause.

Dated this 11th day of November, A. D. 1887.

SAMUEL DICKSON,
Complainant's Solicitor.

Received a copy of the above notice this 11th day of November, A. D. 1887.

JOHN G. JOHNSON,
Def'l's Solicitor.

930 In the Circuit Court of the United States for the Eastern District of Pennsylvania. In Equity.

PULLMAN'S PALACE CAR COMPANY
vs.
THE CENTRAL TRANSPORTATION COMPANY.

It is hereby agreed that the deposition of A. O. Bacon, Esquire, may be taken before E. F. Best, Esquire, United States commissioner, at the office of the said commissioner, in the city of Macon, Georgia, on the part of the complainants, on the 29th of November next, between the hours of 10 o'clock, a. m., and 6 o'clock, p. m., and may be continued from day to day, Sundays excepted, until completed. Such testimony to be taken down by the commissioner in the form of question and answer, and after the testimony on behalf of complainants shall have been returned to the counsel for the defendants, he shall have one week after receiving the same within which to file cross-interrogatories and the complain-ts, if desiring to do so, to have three days within which to prepare interrogatories for re-examination-in-chief, which shall then be sent to the commissioner and the deposition completed. It is further agreed that the taking of this deposition upon the day named shall not interfere with the taking of depositions in the city of Chicago on the same day.

JOHN G. JOHNSON,
Pro Defendants.
SAMUEL DICKSON,
Pro Plaintiff.

931 It is further agreed that the testimony of A. O. Bacon may be taken before any United States commissioner or clerk of

a court of record, and at any time or place other than Macon aforesaid, where the said Bacon may be found to testify; the said testimony being in all other respects subject to the provisions contained in this stipulation on the other page of this sheet.

Chicago, November 28, 1887.

JOHN G. JOHNSON,
Att'y for Defendants.

Circuit Court of the United States for the Eastern District of Pennsylvania.

PULLMAN'S PALACE CAR COMPANY *vs.* THE CENTRAL TRANSPORTATION COMPANY. } In Chancery. No. 44. October Sessions, 1886.

UNITED STATES OF AMERICA, *Northern District of Georgia.*

On this second day of December, in the year of our Lord, 1887, I, Henry C. Hamilton, the clerk of the district court of the United States for the northern district of Georgia aforesaid, under and by virtue of the notice and the stipulations of counsel hereto attached, caused to be and personally appear before me at Atlanta, in the district aforesaid, Augustus O. Bacon, to testify on the part of the complainant in a suit pending and entitled as above; and I was attended by Edward S. Isham, of counsel for said complainant; and the said AUGUSTUS O. BACON having been by me first
932 duly sworn to testify the truth in the suit aforesaid, did depose and testify as follows, being examined by Mr. Isham:

Q. Please state your name in full and occupation.

A. Augustus O. Bacon, lawyer.

Q. Your residence?

A. Macon, Bibb county, Georgia.

Q. How long have you been in the practice of your profession, Mr. Bacon?

A. About twenty-two years.

Q. Did you at any time hold any professional relations to the complainant in this case, The Pullman's Palace Car Company; if so, what, when did it begin and when did it end?

A. I was the assistant general counsel of the Pullman's Palace Car Company in 1884, there being at that time no other general counsel except Judge Lochrane. In other words, there was no other assistant general counsel. My connection with the company as such assistant general counsel began about February 1st, 1884, and continued until about January 1st, 1885. I was not, however, actively engaged in the business of the company after about the 8th of November, 1884, as I was kept at home during the remainder of the year by illness in my family.

Q. How much of that time were you actively in charge of the legal business of the complainant?

A. I was in the active charge of the business of the company

during almost all of that time. I was induced to accept employment by the company at the personal solicitation of Judge
933 Lochrane who had fallen into very ill health and who desired to take a trip to Europe; and even before he went to Europe his health was such that he had very little active connection with the company except occasionally as to some particular matter, and for three or four months of the time he was absent in Europe and I had complete charge.

Q. Do you remember what part of 1884 he was in Europe?

A. I think he went to Europe about midsummer, and that he returned about the 1st of November.

Q. You are familiar with the lease of the Central Transportation Company to Pullman's Palace Car Company in question in this case?

A. I am familiar with the contract of lease.

Q. And with the contract between the complainant, The Pullman's Palace Car Company, and the Pennsylvania Railroad Company which expired on the 27th of January, 1885?

A. I have a general recollection of that contract with the Pennsylvania Railroad Company and at that time had a very thorough acquaintance with it.

Q. Did the subject of the relations of the Pullman Company to the Central Transportation Company under that lease arise in the course of your business as the counsel of the complainant?

A. It did.

Q. If so, at what time in the period of your relation as counsel?

A. I have no written memoranda of data by which I can
934 fix accurately the date, but I think that it was in April or May 1884.

Q. How did this matter first present itself, what question arose?

A. My recollection is that my first acquaintance with the matter was during a trip from New York to Philadelphia during the afternoon when, by Mr. Pullman's desire, I accompanied him from New York to Philadelphia. My recollection is we were in New York on other business connected with the Pullman Company, as we very frequently were, and that Mr. Pullman received some communication which made it desirable that he should go to Philadelphia for the purpose of meeting a committee of the Central Transportation Company, and he notified me that he would wish me to accompany him. On the way he handed me the copy of the contract between the Pullman Company and the Central Transportation Company and asked me to read the same and give my opinion as to the rights *him* of the Pullman Company thereunder, and specially as to the rights under the eighth section of that contract. I examined the contract and gave him my opinion while I was on the train that under that section he had the right, if the contingency arose which was contemplated in the same, either to annul the contract or to elect to continue it and pay to the Central Transportation a proper share of the net earnings of the business with such lines of railroad as should be continued to be operated.

Q. Do you know, or did Mr. Pullman state to what condition of affairs gave rise to this inquiry of Mr. Pullman at this time?

935 A. Well, I knew previous to that time that the Pennsylvania contract would expire in the succeeding January, and I knew also that many of the lines of railroad, the names of which were specified in that contract of lease with the Central Transportation Company were lines of railroad upon which the Pullman Company was not then operating its cars, and after I had examined the contract and given Mr. Pullman my opinion relative to the rights of the Pullman Company under the same I learned from him that the purpose of the visit to Philadelphia was to confer with the Central Transportation Company relative to the course which he would take in view of an inability to renew the contracts with the various railroad lines, and with the difficulty of making a contract with the Pennsylvania line, a difficulty which he at the time believed to be so great that he was seriously apprehensive that he could not make any contract with them that would be such as he could accept.

Q. What information did the Pullman Company have at that time with reference to the prospect of renewing its contract with the Pennsylvania Company or making a new one?

A. Well, the Pullman Company had been notified by the Pennsylvania railroad that it would not renew the same contract that it had before, or rather that it had at that time, and it was a matter in entire doubt then as to whether any contract could be made with them or not. Mr. Pullman desired to make a contract with

936 them if he possibly could do so, and was endeavoring to bring about an arrangement by which there could be a modified contract, although he recognized that he could not possibly get a renewal of the one then existing. It was so definitely and positively stated to him by the officers of the Pennsylvania Railroad Company that he did not entertain any hope of a renewal of the contract then existing.

Q. Were you present at any interviews between representatives of the Pullman Company and representatives of the Central Transportation Company upon that subject, and when?

A. I was present at quite a number of interviews.

Q. When was your first one?

A. I was present at quite a number of such interviews. My recollection is that the first one is the one about which I have already begun to testify as having occurred on the evening of the day we went from New York to Philadelphia.

Q. How nearly can you, in your best recollection, fix the date of that?

A. I cannot more nearly than to say I think it was April or May, 1884. Everything I say is in reference to 1884.

Q. When did you have that interview—where, who was present representing the Pullman Company and who representing the Central Transportation Company?

A. The interview was at night in one of the parlors of the Continental hotel in Philadelphia. The only representatives of the

Pullman Company present, if I recollect right, were Mr. Pull-
937 man and myself and his private secretary, Mr. Smith, I have forgotten his given name. The representatives of the several transportation companies I cannot give the names of, further than that I remember Mr. Howard and Mr. Lane. There were six or eight gentlemen. I probably would recollect their names if they were suggested to me, but it is sufficient to say I do not remember the names.

Q. In what capacity did they profess to meet you, if any?

A. They represented themselves to be and were recognized by Mr. Pullman and myself to be a committee of the board of directors of the Central Transportation Company.

Q. Did they state what the special function of that committee was?

A. Well sir, to meet Mr. Pullman as the representative of the Pullman Company to confer with him as to what was going to be done with reference to the contracts between the Pullman Company and the Central Transportation Company in view of the known changed conditions as to the contracts between the Pullman Company and various railroad companies mentioned in their contract that are mentioned in the contract between the Central Transportation Company and the Pullman Company, the most particular part of which was the approaching expiration of the contract between the Pullman Company and the Pennsylvania Railroad Company.

Q. Please state as fully as you can and according to your best recollection, what occurred at that interview and what subjects were discussed?

938 A. Well, sir, my recollection is that in that interview Mr. Pullman announced to the committee of the Central Transportation Company that it was his definite purpose to annul the contract between the Pullman Company and the Central Transportation Company, the fact being stated that on a large majority of the railroad lines named in the contract between the Pullman Company and the Central Transportation Company, the contracts for the running of sleeping cars had expired and he had been unable to renew the same, and that the contract with the Pennsylvania Railroad Company which was the principal contract, was to expire in the succeeding January, and that he had been notified by the Pennsylvania Railroad Company that they would not renew the contract with the Pullman Company and that in consequence of all that, the revenues from the sleeping-car business over those lines, including the Pennsylvania Railroad line, must necessarily fall very short of $264,000 a year, if it did not cease altogether substantially. The interview was taken up with the discussion with that intention as avowed by Mr. Pullman and what he would be required to do under the contract, if he did annul it, and I do not recollect that anything definite was proposed or arrived at in the way of a conclusion in that interview further than the statement by Mr. Pullman of the definite purpose of the Pullman Company to annul the contract. I will state that in that interview this committee were evidently exceedingly anxious that Mr. Pullman should not annul the contract,

and that they expressed in as strong terms as they could, the
939 extent of what they understood to be his various obligations to them if the contract was annulled.

Q. Do you remember what was claimed on that subject at this time?

A. Well, I remember very distinctly that in the course of the several interviews and before any definite——

Q. No, I am asking you about this interview.

A. I do not remember that in that particular interview it was claimed that if the contract was annulled, the Central Transportation Company would have the right to select one hundred and nineteen of the best Pullman cars running over the Pennsylvania railroad; but I do remember that such claim was made in a succeeding interview which followed a short time after that.

Q. State what was done by the Pullman Company, if anything, upon this subject, after this interview.

A. After this interview in Philadelphia both Mr. Pullman and myself returned within a short time to Chicago, and I was instructed by Mr. Pullman to prepare drafts of formal notification to the Central Transportation Company that the Pullman Company would annul the contract with the Central Transportation Company upon the expiration of the then existing contract between the Pullman Company and the Pennsylvania Railroad Company, which would be in the succeeding January.

Q. What did you do upon that?

A. I did prepare a formal letter of notification to be signed
940 by Mr. Pullman as the president of the company. I remember making several drafts of that letter which were submitted to Mr. Pullman in the rough, I will say, before one was prepared which met his ideas as to what it should correctly contain, and then the letter was more carefully written off and handed by me to Mr. Pullman to be sent by him to the Central Transportation Company. I am not now distinct in my recollection whether I then knew that the draft was sent by him or carried by him to the Central Transportation Company. I am not sure whether that letter was written in *in* my handwriting or whether it was dictated by me to a stenographer and written on a typewriter. Some of the letters were written in my handwriting; others were put in type.

Q. Have you in your possession any of the original drafts of such communications made by you in the course of that business?

A. I have here, which I now present to the court, two original drafts made by me in pencil in my own handwriting.

Q. Please identify them.

A. One of them of two sheets and the other of three sheets on which I now write my name to identify the same, and I will attach them as exhibits to these depositions—(attached, marked "Bacon Ex.").

Q. Do you know what use Mr. Pullman or other representatives of the Pullman Company made of those documents?

A. Well, I have no distinct recollection as to the letter having

been sent or delivered. I know that I was at the time under
941 the impression that they were so sent or delivered, and I am strongly confirmed in that recollection by the fact that immediately thereafter active preparations were made by the Pullman Company to get things into shape for the purpose of carrying out that notification in the way of arranging for the getting up of the cars, and everything else to make a surrender to the Central Transportation Company of such property as they would be entitled to if the contract was annulled. For instance, I know that active inquiries were set on foot to ascertain exactly what particular cars had been received from the Central Transportation Company and what had become of them, how many of them were still on hand, where they were and what was their condition, and how many had been destroyed or broken up, and what was their character and value at the time they were received from the Central Transportation Company.

Q. Can you state at or about what date these pencil drafts which you have attached to your depositions were made, and how soon and how near that date the formal documents were prepared which you delivered to the president of the Pullman Company?

A. I cannot state accurately, but I think some time about May or the latter part of April, immediately after the first interview spoken of in Philadelphia, and that the formal letter, which was delivered to Mr. Pullman to be sent, was probably written on the same day that these drafts were written which are exhibited.

Q. Were you present at subsequent interviews, subsequent
942 to the one you have mentioned at the Continental hotel, between representatives of the Pullman Company and the Central Transportation Company, if so, please state as fully as you can, according to your best recollection, the substance of such interviews, what occurred between the parties, what negotiation they led to, if any, and what results, if any? State in a general way as fully as you can?

A. An answer to that question would cover a great deal of ground for the reason that I was present at quite a number of subsequent interviews, and I can best answer it by taking up first the next interview after the preparation of these letters.

Q. Very well, please do that?

A. After the preparation of the letter of notification, and after the investigations had been made of which I have spoken in answer to a previous question as to the property received from the Central Transportation Company, etc., Mr. Pullman had an appointment made with the same gentleman composing the committee of the Central Transportation Company to meet them in Philadelphia, and by his requirement, Judge Lochrane, the general counsel, who was then in Chicago, and Mr. Davie, who was then auditor, and myself accompanied him to Philadelphia. At the same time, I think, Mr. Pullman's private secretary, Mr. Smith, was again along. I think that composed the entire party. I will say here that according to my recollection that is the only time Judge Lochrane was ever present at any of the interviews during the time of which I speak, as his health

was then very bad. We again met this committee in a parlor of
943 the Continental hotel. I recollect that the same gentlemen were present, and that there were two or three others present who had not been present at a previous meeting. I recollect particularly one gentleman, whose name I do not now recall, who lived in New York and who boarded at the Grand hotel, where I myself stopped. I think he was present at that interview; I know he was present at several of the interviews. The questions between the Pullman Company and the transportation company were more fully discussed at this interview than at the prior interview. Mr. Pullman still announced to them his intention to annul the contract, and the members of the committee again urged the various requirements which they claimed they had the right to make of the Pullman Company under the contract, if it was annulled, and *it* this interview I recollect particularly that there was a very heated discussion which grew out of the earnest assertion by the transportation company's representatives that they would have the right, in case of an annulment of the lease, to select one hundred and nin-teen of the finest parlor cars that ran over the line of the Pennsylvania railroad in lieu of the cars which they had originally delivered to the Pullman Company. This claim of right on the part of the transportation company was very vigorously denied by the representatives present of the Pullman Company. The questions were also discussed as to the possibility of making a contract with the Pennsylvania Company, and as to whether the Pennsylvania would permit
944 the Central Transportation Company to run sleeping cars over its lines in case there was no contract made with the Pullman Company and the representatives of the transportation company were very earnest in ur-ing Mr. Pullman to try to make a contract with the Pennsylvania Railroad Company. My recollection is that at that interview the negotiations took no definite shape but were confined generally to a discussion of the questions which I have mentioned and that the meeting was broken up with the understanding that there would be a subsequent interview at no great distance of time.

Q. Now please go on and state consecutively and fully as you can the subsequent negotiations that occurred between the Pullman Company and the Central Company during the time that you were connected with them, and what conclusions, if any, were arrived at.

A. I will say first that about this time Mr. Pullman, representing the Pullman Company, having me with him as his counsel, began to have a series of interviews with the officers of the Pennsylvania Railroad Company for the purpose of seeing whether or not a contract could be made with that company, and the subsequent interviews had with the Central Transportation Company were sandwiched along between interviews had contemporaneously with the Pennsylvania Railroad Company as to making a contract between the Pullman Company and the Pennsylvania Railroad Company. After the second interview of which I have more particularly spoken
the Central Transportation Company committee were very
945 earnest in their opposition to an annulment of the contract

by the Pullman Company, and urged Mr. Pullman not to annul the contract but to continue it under the last portion of the eighth section of their lease by which he would be authorized to continue the contract and pay a fair proportion of the revenues which he would receive under renewed contracts with the Pennsylvania railroad.

Q. State whether these alternative clauses of the lease to which you have referred were or were not referred to and discussed in these interviews.

A. They were very fully and frequently referred to and discussed and we had the contract there with us present. We always carried it with us to every interview we had with the committee. I do not remember whether it was ever read out or not, but I recollect that I generally had it myself for the purpose of reference and using it in an argument with them as to what our rights were. Mr. Pullman said he had not considered seriously the question of exercising the alternative which he was authorized to exercise in the latter part of the clause eight, because he had not been led to believe that the question as to what would be considered by them as a fair share could be easily adjusted between them and that he wanted no controversy on the matter, and that he had proposed in consequence of that to annul it for the reason that he did not believe he could get any contract with the Pennsylvania Company which would enable him to make such a profit as would authorize him to pay any considerable amount to the Central Transportation
946 Company. The committee urged him to abandon his purpose to annul the contract and to elect to pay them in the future the share of revenues which was authorized in the eighth section, and further urged him to go forward and endeavor to make the most favorable contract possible with the Pennsylvania Company and that they would be willing, if he would do so, to agree with him in a liberal spirit upon what would be a fair share of the revenue to which they would be entitled.

Q. State whether any conclusion and definite arrangement were come to upon this subject, and if so what were they?

A. Mr. Pullman finally announced to them that he would not annul the contract but that under their assurances to him that they would accept a proper share of the revenue to be derived from such contract as he could make with the Pennsylvania Company he would go forward and do the best he could to make the most favorable contract which the Pennsylvania Railroad Company would allow him to have. I want to state this that the question as to what revenue could be made under any possible or probable contract which could be made with the Pennsylvania Railroad Company was frequently discussed. It was stated by Mr. Pullman and full details of fact given in support of the statement, that it would be impossible to earn the $264,000, or anything approximating it, and that fact was recognized and fully conceded in express terms by all of the committee. Mr. Pullman stated if there was any expectation or any such amount being paid by the Pullman
947 Company, he would not attempt to renew the lease, but

would undoubtedly annul it, and the committee of the Central Transportation Company fully conceded the fact that such amount could not be earned and would not be expected, and that whatever amount was paid in the future, if Mr. Pullman elected to continue the contract under the last clause of the eighth section, would be an amount which should represent their share of the revenues to be derived under the contract with the Pennsylvania road.

Q. I will ask you once more, Mr. Bacon, whether any definite understanding was come to between the parties upon that subject, and if so, what it was?

A. The definite understanding was this, that Mr. Pullman would abandon his avowed intention of annulling the lease; that he would elect under the last clause of section eight to continue the lease, and after the expiration of the then existing Pennsylvania contract not pay them two hundred and sixty-four thousand dollars, but pay them such an amount as would represent a proper share of the revenues to be derived from a future contract to be made. Further, the definite understanding was that upon his undertaking to do that they would use all their influence to try to get the Pennsylvania Railroad officials to make as favorable a contract with him as they could. When this was definitely arrived at and understood, Mr. Pullman did renew with increased earnestness his efforts to make a contract with the Pennsylvania Company.

948 Mr. Pullman and myself had a great number of interviews with the vice-president of the Pennsylvania Railroad Company (I think the second vice-president), and his lawyer, in the office of the Pennsylvania Railroad Company, in Philadelphia, interviews which lasted almost all of the business day, in which the contract was taken up, section by section, and in which such changes were incorporated as the Pennsylvania Railroad Company, required, and such as Mr. Pullman could have incorporated, looking to the best interests of his company.

Q. Were these negotiations and discussions with the railroad company reported by you to the Central Transportation Company?

A. Very frequently. The progress of the negotiation between the Pullman Company and the Pennsylvania Company was at each meeting with the committee of the Central Transportation Company reported to that committee, and the probabilities of a successful conclusion of the contract as often discussed, and the difficulties which were in the way were also discussed and various measures and devices considered for removing the same, and in all of them the influence which that contract would have upon the share which the Central Transportation would get out of the revenues, was considered. And I desire to state another thing; that the fact was fully presented by Mr. Pullman that he would not attempt to make a contract with the Pennsylvania Company, unless it was fully understood that the Central Transportation Company would accept its share of the revenue and would agree with him in a liberal spirit as to what that share should be.

949 Q. To how late a period during your relations with the Pullman Company did these various negotiations with the Central Transportation Company continue?

A. The larger number of these interviews occurred during the months of August, September and October, during almost the entire period of this time both Mr. Pullman and myself had our headquarters in New York and made frequent visits over to Philadelphia for the purpose of conferring both with the Central Transportation Company and with the Pennsylvania Railroad Company, and such interviews continued up to about the first of November or latter part of October. About the middle of October, I think it was, I returned to Chicago and was present at no interview subsequent to that time.

Q. What then was the subject-matter of discussion as between the Pullman representatives and the Central Transportation Company people in the latter interviews of which you have spoken?

A. Well, the subject-matter of discussion between Mr. Pullman and the committee of the Central Transportation Company during the latter interviews was almost altogether as to the terms of the contract then sought to be made with the Pennsylvania Company. After the conclusion had once been reached between the Pullman Company and the committee of the Central Transportation Company that Mr. Pullman would continue the lease and give them a share in the profits, or rather a share in the net revenues to be derived under the new contract with the Pennsylvania Com-

950 pany, there was so far as I recollect, no particular discussion as to any question between the Pullman Company and the Central Transportation Company except as to how such revenues could be earned under the contract with the Pennsylvania Company, and what the share of the Central Transportation Company would be.

Q. How far had the negotiations toward obtaining a new railroad contract progressed at the time when your relations to the negotiations ceased?

A. As I have said we had a great many interviews with the officers of the Pennsylvania Railroad Company, and the contract, while it had not been finished, had progressed very nearly to a conclusion as to a great many different points that were under discussion.

Q. Had it progressed so far that you could see substantially what it was to be?

A. Yes, sir, it had progressed to a point where the substantial features of the contract had in the main been all agreed to. There were some minor matters of detail which were still left to be arranged, and I would state that the contract as it had progressed up to that point differed in a great many very material features from the then existing contract between the Pullman Company and the Pennsylvania Railroad Company, and were less advantageous to the Pullman Company.

Q. At the time when your connection with these transactions ceased, state what agreement, if any, or arrangement had been come

to between the parties as to the form in which the share of the
953 Central Transportation Company in the earnings under the new contract should be paid. Had any agreement been arrived at that a share of the Central Transportation Company should be fixed at any specified sum, or what was the state of the agreement on that subject at the time you ceased your connection with them?

A. Up to the time that I ceased to have any active connection with the negotiation there had never been any agreement as to the exact amount per annum, I will say any fixed amount per annum, or that there should be a fixed amount per annum. There were, however, very frequent discussions as to what the share of the Central Transportation Company of the revenues would probably amount to per annum. I will state that there was a very evident desire on the part of both parties to arrive at as accurate an estimate as possible of what that share would yield per annum.

AUGUSTUS O. BACON.

Answered, sworn to, and subscribed before me this 2d day of December, 1887.

H. C. HAMILTON,

[SEAL.] *Clerk United States District Court, Northern District of Georgia, and Commissioner.*

951 Exhibit to Mr. Bacon's testimony, to be inserted at end of his direct testimony on page 777:

To the Central Transportation Company, Philadelphia:

I beg to inform you that the contract of Pullman's Palace Car Company with the Pennsylvania Railroad Company by which the sleeping cars of the Pullman Company are now permitted to be run over the railroads owned and controlled by the Pennsylvania Railroad Company will expire on the 27th day of January, 1885, and that the Pennsylvania Railroad Company refuses to renew said contract with Pullman's Palace Car Company. By reason of such refusal, the profits, income, and revenue derived from and under the remaining contracts with railroads assigned by the Central Transportation Company to Pullman's Palace Car Company by the contract of February 17, 1870, will necessarily be reduced below the sum of two hundred and sixty-four thousand dollars per annum. In consequence of this, Pullman's Palace Car Company will, as authorized by the eighth section of the contract of February 17, 1870, on the said 28th day of January, 1885, declare null and void the said contract of February 17, 1870, between the Central Transportation Company and Pullman's Palace Car Company. In pursuance of said contract Pullman's Palace Car Company will on said 27th day of January, 1885, discharge to the Central Transportation Company each and all of the obligations imposed upon it by the said contract of February 17, 1870.

To the Central Transportation Company, Philadelphia:

I beg to inform you that the contract of Pullman's Palace Car Company with the Pennsylvania Railroad Company, by which the cars of the Pullman Company are permitted to be run over
952 the roads owned and controlled by it, will expire on the 17th day of January, 1885, and that the Pennsylvania Railroad Company refuses to renew said contract with the Pullman Company. By reason of such refusal, the profits, income and revenue derived from and under any other and remaining contracts with the railroad companies embraced in the list of those whose contracts were originally assigned by the Central Transportation Company to the Pullman Company will necessarily be reduced below the sum of two hundred and sixty-four thousand dollars per annum. In consequence of this, Pullman's Palace Car Company will, as authorized by the eighth section of the contract of February 17th, 1870, on the said 27th day of January, 1885, declare rescinded, null and void the said contract of February 17th, 1870, between the Central Transportation Company and Pullman's Palace Car Company. In pursuance of said contract, Pullman's Palace Car Company will on said 27th day of January, 1885, surrender and deliver to the Central Transportation Company such as remains of the 119 cars originally leased by the Central Transportation Company to Pullman's Palace Car Company, with their furniture, bedding, bed clothing and apparel in like good order as the same were received, with such additions, betterments and improvements as have been or shall be made in the same; also, at the same date, Pullman's Palace Car Company will deliver to the Central Transportation Company such cars as have been constructed by Pullman's Palace Car Company, in renewal or substitution of such of the original one hundred and nineteen cars as have been destroyed or have passed out of the service and possession of Pullman's Palace Car Company, the said cars so to be delivered being in like good order and condition, together with the bedding, furniture, bed clothing and apparel, as those for which they are substituted. And Pullman's Palace Car Company will also, at the same time, discharge each and all of the obligations imposed upon it by the said contract of February 17th, 1870.

953 *Cross-interrogatories to A. O. Bacon.*

First. On pages 18 and 19 of your testimony you have spoken of a definite understanding or a definite agreement between the plaintiffs and defendants. Please state:

a. What members of the committee of the corporation de-
954 fendant were present when the so-called definite understanding was reached? What member took part in the understanding? Were any persons present on behalf of the corporation other than said committee?

b. Was the so-called understanding in writing? If you say it was oral, give the substance of what was said by the parties who made the agreement? Do not give your conclusions, but, as nearly

as possible, give the words of the agreement of the parties, stating by whom the words were said?

c. Give, as nearly as possible, the date at which the matters last referred to occurred, and the place of the occurrence?

d. Give, as nearly as possible, the substance of what Mr. Pullman agreed, on behalf of the company, to do.

e. State if Mr. Pullman, on behalf of his company, agreed that it would endeavor to make a new lease with the Pennsylvania Railroad Company on the most favorable terms procurable, and that it would pay a fair share of the rental thereafter to be derived therefrom, to the corporation defendant, and that it would not cancel the old agreement. Was this agreement made by him in such a way as deprived his company of the right in the future, in case the lease should be made, to cancel the Central Transportation Company lease whilst such new one should continue, and obliged it to pay a fair share of such future rental even though the exact amount to be paid could not be agreed upon in dollars and cents antecedently to the making of such new lease?

955 *f.* Was there a resolution of the board of directors of the Pullman's Palace Car Company, drafted by you, or known to you, which authorized Mr. Pullman to make, on behalf of that company, any such agreement?

g. State if Mr. Pullman, on behalf of his company, bound it to give up the right to cancel the lease and bound it to pay a fair share of future revenue as the same might thereafter be agreed upon or otherwise?

h. Was anything agreed upon as to whether the fair share should be the whole of the net rental, or only a part thereof?

If you say it was to be only a part, state if the percentage was agreed upon?

Second. Did you ever draft or hear of the existence of any resolution of the board of directors of the Pullman's Palace Car Company authorizing a cancellation of the agreement with the Central Transportation Company?

Third. Give, as nearly as you can, the date when you prepared the formal letter of cancellation of the agreement between plaintiffs and defendants. State how long it was thereafter before the so-called definite understanding was arrived at?

Fourth. When next, after your withdrawal from active connection with the affairs of the Pullman's Palace Car Company, did you see your pencil notes of letter of cancellation or the formal letter? Did you exhibit these or any of them to any third person, or were they shown to you? If you say they were shown to you, state by whom, and where they were found?

956 Fifth. State, as fully as you can, the length of time consumed by preparation for a surrender to the Central Transportation Company by the Pullman's Palace Car Company of the property of the former, the date of the commencement of these preparations, and the time when they ceased.

Sixth. State, as nearly as you can, the interval of time which elapsed between the time when Mr. Pullman first stated his inten-

tion to cancel the lease to the committee of the Central Transportation Company and the time when the so-called "definite understanding" was arrived at.

Are you sure that both events did not take place before the middle of April, 1885? If you say you are sure they did not, state your reasons for so saying.

Seventh. Were you present at negotiations between the committee of the Central Transportation Company and Mr. Pullman, at which it was sought to fix in dollars and cents, the future rental to be paid by the corporation plaintiff to the corporation defendant? Was the decision as to a percentage to be paid or as to a fixed amount to be paid in the future?

Eighth. What was said which deprived the Pullman's Palace Car Company of the right to refuse to make a contract with the Pennsylvania Railroad Company upon any terms, and what was said which deprived it of the right to cancel the existing agreement with the Central Transportation Company and to surrender to the latter its property? If you say anything was said, state in detail the substance of what was said by both parties and the names of the parties who spoke.

957 Ninth. Was Mr. Pullman willing to sign a binding agreement with the Pennsylvania Railroad Company until the amount in the future to be paid by his company to the Central Transportation Company was paid in dollars and cents?

Tenth. Name the amount stated by Mr. Pullman to have been the earnings of his company under the old Pennsylvania Railroad lease, also what he stated as the probable net earnings under the new?

UNITED STATES OF AMERICA, }
Northern District of Georgia. }

On this the 7th day of January, in the year of our Lord 1888, I, Henry C. Hamilton, the clerk of the district court of the United States for the northern district of Georgia aforesaid, under and by virtue of the notice and the stipulations of counsel hereto attached, caused to be and personally appear before me at Atlanta, in the district aforesaid, Augustus O. Bacon, to testify in answer to cross-interrogatories propounded by the defendant in said cause, he having already testified in answer to questions propounded to him by the complainant in the same.

And the said AUGUSTUS O. BACON having been by me first duly sworn to testify the truth in the suit aforesaid did depose and testify as follows:

In answer to first cross-interrogatory he answers:

I cannot recall the names of all the members of the committee. I stated in answer to questions on direct examination that I could only recall the names of a Mr. Howard and a Mr. Lane. I
958 now recall also the name of a Mr. Wright, if I am not mistaken. I did not charge my memory with the names of these gentlemen, as I never anticipated being called upon in future to

state the same. There were some six or eight representatives of the Central Transportation Company. When the definite understanding about which I have testified was finally reached between Mr. Pullman and the members of this committee, I should say that all of the members of the committee took part in the understanding and agreed to it. If there was any dissent on the part of any member of the committee after this understanding was reached it was not made known in my presence or hearing. I am unable to say whether the persons present on the part of the Central Transportation Company were all members of the committee or whether there were some of them officers of the company who met with the committee for the purpose of advising with and assisting the same. There was no roll called of the committee, nor was there any other public announcement made of the fact whether all the members of the committee were present or whether some of the persons present were officers of the corporation and not members of the committee.

b. The understanding was not in writing so far as I had any knowledge of the same. I am quite sure if it had been in writing I would have known of it. The substance of the agreement has been stated by me in full on pages 18 and 19 of my testimony on the direct examination, to which this cross-interrogatory refers.

Without attempting to restate it as much in detail as I have
959 already done, I will repeat that the agreement was that the Pullman Company would abandon its previously avowed intention to annul the contract with the Central Transportation Company upon the expiration of the contract which then existed between the Pullman Company and the Pennsylvania Railroad Company; that instead of so doing the Pullman Company would elect to continue the contract of lease under the last clause of the eighth section of the contract; that after the contract, which then existed between the Pullman Company and the Pennsylvania Company had expired, the Pullman Company was not to pay the Central Transportation Company $264,000 per annum, but would pay them such an amount as would represent a fair share of the net revenue to be made from a future contract between the Pullman Company and the Pennsylvania Railroad Company; that what that fair share should be was to be determined between the Pullman Company and the Central Transportation Company after the conclusion of the contract between the Pullman Company and the Pennsylvania Railroad Company, or, rather, I should say, after the negotiations between the Pullman Company and the Pennsylvania Railroad Company had progressed to a point where it could be known with reasonable definiteness what such contract would be; that the Central Transportation Company would meet the Pullman Company in a liberal spirit in agreeing on such amount, and that the Central Transportation Company would give its influence and aid to the Pullman Company, in the effort to secure as favor-
960 able a contract as possible with the Pennsylvania Railroad Company. It was fully conceded by the representatives of the Central Transportation Company, that that amount was to be necessarily very much less than $264,000 per annum. I do not

give these as my conclusions, but as the distinct agreement of the parties at the time. I do not profess to give the words of the agreement of the parties, as that would be impossible; nor can I state what particular thing was said by particular parties representing either side, but I can state the substance of the agreement, and have endeavored to do so accurately.

c. I cannot fix the date more definitely than to say that my recollection is that it was in April or May. The place was the Continental hotel in Philadelphia.

d. I have answered this question in substance in my reply to subdivision (*b*) of the first cross-interrogatory. I may add, however, that Mr. Pullman further agreed that he would use his utmost endeavors to get as favorable a contract as possible from the Pennsylvania Railroad Company.

e. Mr. Pullman did, in behalf of his company, agree that he would endeavor to make a new lease with the Pennsylvania Railroad Company on the most favorable terms procurable, and that the Pullman Company would pay to the Central Transportation Company such a share of the rental thereafter to be derived therefrom to the Central Transportation Company as the Pullman Company and the Central Transportation Company should agree upon, and that with such agreement on the part of the Central Trans-
961 portation Company to agree upon the amount in a liberal spirit as they proposed to do, the Pullman Company would not cancel the contract of lease. As to whether this agreement made by Mr. Pullman deprived the Pullman Company of the right in the future to cancel the Central Transportation Company lease, whilst the new one should continue, I can only say that there was no discussion on that point. The representatives of the Central Transportation Company were so earnest in their desire that the lease should not be cancelled, and were so pronounced in the expression of their intention to agree in a liberal spirit with the Pullman Company as to the amount which should be paid by the latter to the Central Transportation Company that there was nothing to suggest a doubt as to such an agreement being made by the Central Transportation Company in an amount which would be entirely satisfactory to the Pullman Company. I can say in the utmost confidence, as the legal adviser of Mr. Pullman at that time, and in full and careful conference with him on the subject, that it was the certain belief in this assurance on the part of the Central Transportation Company which induced the Pullman Company to go forward and make a new contract with the Pennsylvania Railroad Company.

f. I may be mistaken, but my recollection is that there was no resolution of the board of directors of the Pullman Palace Car Company drafted by me or known to me which specifically authorized Mr. Pullman to make this particular agreement on behalf of the Pullman Company. I think, however, that an examination
962 of the record will show that there was some written resolution on the part of the board of directors which gave Mr. Pullman very general authority to act for the board in the general affairs of the company. In the term "general affairs" I do not

mean to limit the expression to the general operation of the business of the company in the running of cars, etc., but intend to include the making of contracts. Whether there was any such general resolution or not it is an indisputable fact during the year of my connection with the company Mr. Pullman's control and direction in all such matters was as absolute and unquestioned as if there were the most formal authority vested in him by the board of directors. During the time mentioned I assisted and advised in making a number of most important contracts, not only with railroad companies extending over long terms of years, but as to other matters involving millions of dollars, and I have no recollection that in any single instance the matters were referred to the board of directors for authority to act, but in all such instances Mr. Pullman's decision was recognized as final as if he were the entire owner of the company. In the meetings of the board of directors Mr. Pullman's acts were invariably recognized by the directors as the act of the company, and it was the evident understanding by them all that he had full and complete power to act according to his judgment and on his judgment in all the important affairs of the company.

g. In answer to this question I reply as I did in answer to
963 a former one, that the matter referred to was never discussed at any time when I was present. The question of the right in the future to cancel the lease did not suggest itself, for the reason that after the understanding had once been reached the two parties were in such thorough accord that there did not appear to be any probability of a contingency arising in which there would be any desire to exercise such right. The earnest assurances of the repres-ntatives of the Central Transportation Company that they would agree in a liberal spirit with the Pullman Company as to the amount to be paid, and the discussions which occurred as to what such amount would probably be, did not leave any doubt as to that amount being ultimately agreed to, which would be entirely satisfactory to the Pullman Company.

h. The agreement was that the share should be such a part of the net rental as the parties should subsequently agree upon. There was no agreement of the definite percentage or amount to be paid. There were very frequent discussions as to amounts which would probably l e realized as such proper share; the costs of cars and of the service, and the nature of the contract with the Pennsylvania Company being taken into consideration.

To second cross-interrogatory witness answers:

To the best of my recollection I never drafted and never heard of the existence of any definite resolution of the board of directors of the Pullman's Palace Car Company particularly authorizing a cancellation of the agreement of the Central Transportation Company.

To the third cross-interrogatory witness answers:

964 I cannot give more particularly than I have already done, the date when I prepared the formal letter of cancellation of the agreement between plaintiffs and defendants. I can only state generally that my recollection as to the first interview between the parties, at which I was present, and as to the preparation of the

formal letter of cancellation of the agreement, and as to the interviews immediately succeeding in which the understanding was arrived at, that they were all either in April or May, 1884, or partly in one month and partly in the other. It is proper to say that I have before me none of the books or correspondence or any other written data by which I can fix the date. It is also proper to say that at the time I was engrossed in an immense amount of business for the Pullman Company, and that while the matters which occurred in this particular transaction were very clearly fixed in my memory by reason of their great importance, and also of the large responsibility which rested upon me, at the same time there was nothing to fix upon my memory dates with accuracy. I do remember clearly the season of the year, although not the particular date.

In answer to the fourth cross-interrogatory, witness says: After my withdrawal from active connection with the affairs of the Pullman Company, I did not see my pencil notes of the letter of cancellation until about the time that I answered the direct questions put to me on behalf of the plaintiff in this case; and I do not recollect ever to have seen the formal letter of cancellation since my withdrawal from the active employment of the company, and I
965 am confident I have not seen it since that time. The pencil notes were left by me, together with all other papers pertaining to the business of the company, in the law office of the company in Chicago. They were brought from Chicago and delivered to me by Mr. E. S. Isham about the time of my direct examination in this case. It is proper to say that my attention was called to them about a year ago, under the following circumstances: I was in New York city either in the latter part of January or early part of February, 1887. I called at the Pullman office in the Mills building to pay a social visit to friends. I found there Mr. Pullman, Gen. Horace Porter, Judge Lochrane and Mr. E. S. Isham. Mr. Isham said, as the meeting apparently broke up on my entrance, "Perhaps Mr. Bacon can tell us something about this Central Transportation matter" or words to that effect. I replied that my recollection was quite distinct as to what occurred when I was present, and gave them in substance a statement of my recollection of the same. Judge Lochrane then called my attention to the fact that the pencil draft of the letter of cancellation which I had written was then in the office in Chicago.

In answer to the fifth cross-interrogatory the witness says:

I cannot state any more fully than I have done the precise dates of these occurrences relative to the preparation for a surrender to the Central Transportation Company by the Pullman Company of the property of the former, and the time when such prepara-
966 tion ceased. I have stated the circumstances under which these preparations were begun, how far they progressed and the circumstances under which they ceased. I think they all occurred during the months of April or May, one or both.

To the sixth cross-interrogatory witness answers:

I think it was several weeks from the time when Mr. Pullman first stated his intention to cancel the lease, and the time when the defi-

nite understanding was arrived at. I use the word "think" as expressive of recollection, and cannot be more definite. It is possible that both events did occur before the middle of April, 1884, although I do not think they did. I am not sure that such is not the fact, but such is not my recollection. I repeat that I have nothing in the way of written memorandum to guide my recollection as to the precise date.

To the seventh cross-interrogatory witness answers:

I was present at negotiations in which there were discussions as to what would be the amount which, considering everything as to cost of cars and service, and of the nature of the contract of the Pennsylvania Railroad Company would be proper for the parties to agree upon as the future rental. Those were matters of detail, involving questions with which I was not familiar, so far as cost of cars and cost of service, etc., were concerned. There never was, so far as I now recollect, any definite effort to fix a certain sum and agree upon the same during the interviews at which I was present,
967 because it was recognized that this could not be done until after the contract between the Pullman Company and the Pennsylvania Railroad Company had been finally concluded. I remember that the facts that the Pennsylvania Railroad Company insisted upon being relieved from the payment of mileage on cars, and also on the right to run its own parlor cars, and also on the right to an option to take a large share in the Pullman business over its road, were all discussed and considered as matters which must exercise a large influence on the amounts which the Pullman Company could afford to pay.

In answer to the eighth cross-interrogatory, witness says:

This question is rather opaque, and I am not sure that I catch the exact meaning of it. There was no stipulation, so far as I recollect, that the Pullman Car Company should not have the right to refuse to make a contract with the Pennsylvania Railroad Company upon any terms, and that it should not have the right to cancel the existing agreement with the Central Transportation Company and to surrender to the latter its property. There was, however, as I have previously said, a very distinct and well-understood agreement between the parties that the Pullman Company would make the best contract it could with the Pennsylvania Railroad Company upon the assurance on the part of the transportation company that it would no longer expect the $264,000 per annum, and that it would accept in lieu thereof an amount which it would agree upon
968 in a liberal spirit with the Pullman Company as a proper share of the net revenues received under the contract between the Pullman Company and the Pennsylvania Railroad Company; and further, upon such assurance that the Pullman Company would not cancel the existing agreement with the Central Transportation Company.

To the ninth cross-interrogatory witness answers:

I do not know, from anything said by Mr. Pullman specifically on the question, whether he would have signed a binding agreement with the Pennsylvania Railroad Company before the amount

to be thereafter paid by the Pullman Company to the Central Transportation Company was paid in dollars and cents. I am satisfied, however, from the earnestness with which he was endeavoring to conclude his contract with the Pennsylvania Railroad Company that he was relying most implicitly upon the assurances which had been given to him by the Central Transportation Company representatives as to what future rental would be expected and agreed upon by them.

To the tenth cross-interrogatory witness answers:

I do not remember the amount stated by Mr. Pullman to have been the earnings of the company under the old Pennsylvania Railroad lease, or the amount stated by him as to the probable net earnings under the new. I presume the word "lease" is used in this connection to mean contract.

AUGUSTUS O. BACON.

Answered, sworn to and subscribed before me, this 7th day of January, 1888.

H. C. HAMILTON,

[SEAL.] *Clerk United States District Court, Northern District of Georgia, and Commissioner.*

969 THE PULLMAN PALACE CAR COMPANY
vs.
THE CENTRAL TRANSPORTATION COMPANY.

SATURDAY, *January* 21, 1888—3 p. m.

Present: The examiner (Samuel Bell, Esq.) and Messrs. Isham and Johnson of counsel.

Mr. Isham offers in evidence from the by-laws of the Pullman's Palace Car Company, adopted September 7, 1882, and in force since that time, by-law upon the powers of the president, being section 1 of article 4 as follows: "Officers. Their powers and duties. Section 1. The president shall be the chief executive officer and fiscal agent of the company, and shall exercise the supervision and control of its property and business affairs. He shall have the power to appoint such other officers, assistants, agents, and employés as he may deem necessary or proper: and shall determine their duties, and fix their compensation. He shall cause a full statement of the financial condition of the company to be made at each annual meeting."

(Mr. Johnson states that he has waived the signatures of all the witnesses called on behalf of the complainant.)

Mr. Johnson admits without formal proof that the usage of the Pullman's Palace Car Company is that the president personally acts as the executive officer of the company, and personally transacts its business according to the provisions of the first clause of the by-law above set out.

970 Acts of assembly and articles of association constituting the charter of the Central Transportation Company to be hereafter furnished by counsel for the Pullman's Palace Car Company to be considered in evidence.

Adjourned.

971 SATURDAY, *February* 11, 1888—4 p. m.

Present: Messrs. Dale and Burry, for complainants, and Mr. John G. Johnson, for defendants.

Mr. Burry, counsel for plaintiff, offers the following:

The Charter of the Central Transportation Company.

This is to certify that the undersigned have formed a company under the provisions of an act of assembly of the Commonwealth of Pennsylvania, entitled, "An act to encourage manufacturing operations in this Commonwealth," approved the seventh day of April, 1849, and supplements thereto. The company has been formed for the purpose of the transportation of passengers in railroad cars constructed and to be owned by the said company in accordance with the several letters patent granted to T. T. Woodruff, to wit: Letters patent No. 16159 and No. 16160 dated December 2, A. D. 1856; No. 24259, dated May 31, A. D. 1859, and No. 26942, dated January 24, A. D. 1860.

The corporate name of the company will be "The Central Transportation Company." The capital stock of the company will be two hundred thousand dollars ($200,000) to be divided into four thousand shares of fifty dollars ($50) each. The sum of one hundred thousand dollars ($100,000) has actually been paid in to T. T. Woodruff, one of the undersigned who was appointed to receive the same, in amounts *pro rata* with the several subscriptions. The residences of the subscribers, and the number of shares subscribed for,
972 and the amounts paid in to the said T. T. Woodruff by each are as follows:

Names of subscribers.	Residence.	Number of shares subscribed.	Amounts paid.
T. T. Woodruff	Philadelphia	2,141	$53,525
O. W. Childs	Philadelphia	536	13,400
G. R. Dykeman	Philadelphia	536	13,400
Jonah Woodruff	Pittsburgh	322	8,050
W. S. Hickox	Mansfield, O.	465	11,625

The chief operations of the company are to be carried on in the city and county of Philadelphia, and the association is to continue for the term of twenty years from the time when the same may be incorporated.

VAN

Directors, to wit: T. T. Woodruff, O. W. Childs, G. R. Dykeman, Jonah Woodruff and W. S. Hickox, have been chosen to manage the affairs of the company until the next annual election.

T. T. WOODRUFF.
O. W. CHILDS.
G. R. DYKEMAN.
JONAH WOODRUFF.
W. S. HICKOX.

Witnesses as to W. S. Hickox'- signature:
JAMES E. COX.
JOHN MEREDITH.

As to Jonah Woodruff:
T. DONALDSON.
T. LUDWIG KOETLSEN.
JAMES McCAHEN.
JOHN NEWSHAM.

973 "An act to extend the charter of the Central Transportation Company, to empower them to lease their property and increase their capital stock."

SEC. 1. "Be it enacted by the senate and house of representatives of the Commonwealth of Pennsylvania, in General Assembly met, and it is hereby enacted by the authority of the same, That the charter of the Central Transportation Company, incorporated under the act of assembly, entitled: 'An act to encourage manufacturing operations in this Commonwealth;' approved April 7th, one thousand eight hundred and forty-nine, and the supplements thereto be and the same is hereby extended for ninety-nine (97) years from the expiration of its present charter; and said company are hereby empowered to enter into contracts with corporations of this or any other State for leasing or hiring a transfer to them, or any of them, of their railway cars and other personal property, and shall have power to increase their present capital stock two hundred thousand dollars ($200,000).

"BUTLER B. STRANG,
"*Speaker of the House of Representatives.*
"J. H. STINSON,
"*Speaker of the Senate.*

"Approved the ninth day of February, anno Domini one thousand eight hundred and seventy.

"JOHN W. GEARY."

974 JOHN F. GLOSSER, having been duly sworn, was examined as follows:

By Mr. BURRY:

Q. Please state your name, residence and occupation.
A. My name is John F. Glosser, and I am at present living in Lancaster, Pennsylvania. I have charge of the railroad clearing-house 1429 Market street, Philadelphia.
Q. How long have you had charge of that clearing-house?
A. Since 1871.
Q. What is the business of the clearing-house?
A. The apportionment of the expenses of the Pullman cars to the different railroads over which they have run from 1871 down to the present time. It is in operation now.

Q. Please name the principal roads to which you apportion expenses of the cars.

A. The Pennsylvania system east and west of Pittsburg; the Richmond and Danville system; the East Tennessee, Virginia and Georgia; the Louisville and Nashville, and other minor roads south and west.

Q. From 1871 did you apportion among these and other roads the repairs put upon the Pullman sleeping cars operated upon the Pennsylvania system of roads?

A. From 1871 until about 1882.

Q. In conducting such apportionments, did you become familiar with the amounts of the bills of repair for each car?

A. Somewhat so; yes, sir.

975 Q. Did all the bills for repairs put upon Pullman sleeping cars from, say, 1871 until 1880, pass through your hands?

A. All the bills upon cars assigned to the Pennsylvania Railroad system for repairs passed through my hands from 1871 until about 1879, when a portion of them were transferred from the assignment to the mileage basis.

Q. From your experience in the matter of repairs put upon sleeping cars in ordinary use, and particularly those assigned to the Pennsylvania system, please state what, in your opinion, is the average amount of repairs put upon sleeping cars per year while in operation such as that had by the cars assigned to the Pennsylvania railroad?

(Objected to as irrelevant, and because the witness has not been shown to have the proper knowledge.)

A. The average cost per annum of the repairs of these cars per car in the Pennsylvania system would run about $2,400—that is, from the time they commenced running when they were new up until the date when they were transferred from the assignment to the mileage basis.

Cross-examination by Mr. JOHNSON:

Q. You refer to a class of cars different in their construction and quality from those that are now in use in the sleeping-car service, do you not?

A. Cars that were then operated through our accounts were not up to the standard of the present cars.

Q. And it is upon such cars that your average has been taken?

976 A. Yes, sir.

Q. It includes, not only repairs, but betterments, rebuilding and remodeling, does it not?

A. No, sir, we did not take into our accounts any betterments.

Q. Where are the data kept?

A. In my office.

Q. And you could give us the original data could you?

A. Yes, sir.

(Mr. Johnson here asks the witness to produce said data.)

The WITNESS: We have an immense amount of it.

Q. In what shape?

A. It is in all shapes. In the first place, we did not keep separate the cost of repairs from that of the ordinary expenses of heating, lighting and lubricating the cars. They were all massed together, and we apportioned them just as they came to us. In this instance, however, I made out a separate statement covering the cars that were assigned to the Pennsylvania railroad, for the information of Mr. Goodman and other railroad officials. It is only on those that I could get it in the shape that you want it.

Q. It was only upon those that you made the figures?

A. Yes, sir.

Q. How many cars were there?

A. Sixty.

Q. Between what periods was your averaging made?

977 A. Various times just as the cars came on the road new, commencing with 1870 on through 1871, 1872, 1873, 1874 and perhaps latter; say, until 1879, 1880 and 1881 just as the cars were transferred—an average period of about eight years.

Q. Those cars were all of them practically old cars at the beginning of their service, weren't they?

A. No; they were reported to me as new cars when they commenced running.

Q. Were any of them cars which were in the old Central Transportation Company service?

A. No, they commenced with 120.

Q. Where was the repairing done?

A. At Meadows' shop in New Jersey; at West Philadelphia, and at Altoona, Pennsylvania.

Q. What estimates were made upon parlor cars?

A. I do not recollect now whether I made any estimate upon the repairs of the parlor cars.

Q. They required, of course, much less repairs than the sleepers?

A. No, I think the total cost of running them exceeded the cost of running sleepers; but whether that was in the repairs or in the ordinary running expenses, I am unable to state.

Q. You don't know whether any parlor cars were included in that estimate at all?

A. None were included in this estimate that I speak of.

Q. Why were the figures limited to some sixty-odd cars?

978 A. That was the number of the assignment on the Pennsylvania Railroad Company. That was all the Pennsylvania railroad, and then there were eighteen Fort Wayne.

Q. Were the Fort Wayne cars included?

A. Not in this estimate. Twelve Pan Handle—P., C. & St. L.—making about ninety cars, I think.

Q. Can you tell us what the average run of a car is per year, number of miles?

A. The average mileage of these sixty cars that I have mentioned would be about seventy-eight thousand miles per annum.

Q. What is the average mileage now, if you know?
A. That I couldn't tell you absolutely.
Q. It is much larger, is it not?
A. I have no way of determining that, but I think it is more.
Q. What was the shopping allowance of cars in order to fill the needs of a line over and above the cars actually used?
A. That I couldn't tell you, but I suppose it would be about—well, I would not like to answer that; I don't know.
Q. You know the portion of the Pullman service which was called the Central Transportation division, do you not?
A. I have always understood that it embraced the Pennsylvania Railroad Company's roads.
Q. How many cars were required to perform that service; do you know?
A. I do not.
Q. Have you no idea?

A. Yes, sir; I can tell you about how many cars it re-
979 quired in 1883 or 1884 for the Pennsylvania system of roads.

Q. How many?
A. About one hundred and thirteen.
Q. Did that include parlor and sleepers?
A. No, sir, just sleepers.
Q. Did you cease to be connected with it since 1884?
A. No, sir, I am still connected with it.
Q. Do you know whether that number has been increased?
A. That I couldn't tell you. The number has been increased, but they are running on a different basis entirely—on a wild basis—and a car may make two or three trips a month on the Pennsylvania system, and then go to some other roads.
Q. If there were any regular assignment of cars, that number of cars would be sufficient; but not being regularly assigned and running wild, you would have to average it by finding the lengths of the service of the different cars?
A. Yes, sir; I do not say that that number is sufficient, now.
Q. But it was in 1884?
A. Yes, sir, and along there.
Q. And, so far as you know, there has been no increase in the number?
A. Well, I should suppose that there would be From the very nature of the increase of the business, I should suppose that it would require more cars now to do the business than before.
Q. Do you think the business has increased?

A. I think so.
980 Q. Could you tell me, if I was to call off the different lines, the number of cars in each service?
A. No; I am not at all familiar with that now. The information that I get is not given to me in that shape.
Q. Wasn't there a certain shopping allowance for cars then?
A. The Pullman Company may have had an allowance, but I don't know of it.
Q. Did not these 113 cars include the shopping allowance?

A. Yes, sir.

Q. You don't know how many parlor cars were, in 1884, in the service of those lines?

A. I think there were 37 or 39. That is, all together.

Q. What do you mean by "all together"?

A. Parlor cars were assigned to the railroad company the same as sleepers were; but the change from the assignment basis to the mileage basis was not made until some years after the sleepers were turned over, and the Pullman Company had several cars which are included in that number.

Q. Was that a full tally—all told?

A. Yes, sir.

Q. And that included the shopping allowance also?

A. Yes, sir.

Q. Where did you get the data for the repair accounts from?

A. The bills were sent to me regularly monthly from the different railroad companies.

Q. Do you remember the highest amount of any bill for any one repairing?

981 A. I could not tell you the highest amount. It ran from $600—well, it depended, of course, altogether upon the character of the repairs—from $300 up to $1,200 and even higher than that. When the cars were turned over to the Pullman Company bills came in, I think, over $2,000, $3,000 or $4,000 perhaps.

Q. That is what I wanted to ask; whether there were not some bills included as high as $4,000.

A. Yes, sir; but that was extraordinary repairs: to place a car in as good condition as when the company received it.

Q. But still they were put into your average?

A. Yes, sir.

Q. Is it not a fact that there were occasions when those repairs that were put into the average went as high as $5,250?

A. Yes, sir.

Q. Is $5,250 for one repairing the highest that you remember to have gone into that statement in which you made your average?

A. I think some of them ran even higher than that.

Q. Did not three of them run as high as $7,100?

A. I could not say as to the number, but I think there may have been one that was that high.

982 It is admitted by Mr. Johnson that since the date of the lease in 1870, the Central Transportation Company has not been engaged in business, and it is also admitted that said company is not the owner of real estate.

Mr. Burry introduces in evidence to be embodied therein at this point letter dated July 6, 1886, addressed to Messrs. John C. Bullitt and O. A. Lochrane, and signed by John G. Johnson, which is as follows:

PHILADELPHIA, 708 WALNUT STREET, *July* 6, 1886.

Messrs. John C. Bullitt and O. A. Lochrane, attorneys Pullman's Palace Car Company.

DEAR SIRS: I received on the 1st of July your favor of the 30th June.

I now reply to that letter, and to what was asked in the oral interview which immediately followed its delivery. What I say is with the approval of the board of directors of the Central Transportation Company, who do not admit, however, that there has been such a reduction of revenue as entitles your company to annul the lease with them.

We do not believe, even if the lease be at an end, that it will be for the interest of either company, pending the litigation which seems inevitable, to stop the use of the sixty-three alleged to have been substituted cars which have been tendered to us, nor to stop the running of your company over the roads upon which we claim rights. Whilst we will maintain our claim that even if the
983 lease be duly annulled it was not our duty to accept these cars, and that you must in such event (if not bound as we think you are to pay the whole rent until full tender) account to us for the profits which may result hereafter from such running, we will agree that until otherwise notified such use by you of said sixty-three cars, and such running, shall not prejudice your right to insist upon your tender of said cars as a continuing one, and upon your election to annul as being not waived.

This agreement covers, I think, the grounds suggested by you in our conversation.

Our objections to your tender do not rest upon matters of detail. I do not think that an offer to assign the contract with the Pennsylvania Railroad Company unaccompanied by your withdrawal from its lines, is sufficient. Such offer confers upon us no possible chance of deriving any benefit from that contract.

In my judgment your determination to annul the lease is an acquiescence by you in our claim that it was never modified. I only express my opinion because of your allusion to the subject, and because of my desire that you shall not misunderstand the position we will take.

My idea as to thirty-seven cars at Altoona was not correctly understood. Even if the lease be now annulled I do not think you are at liberty to tender us cars which have become obsolete, practically worthless, and incapable of proper remodeling. Any cars of ours in the condition required by the lease, if offered to us
984 in connection with all other things which the lease requires you to do, would be sufficient. I meant to express no more than this. In Mr. Stevens' letter you will see the position assumed by our company concerning these matters. If through any misunderstanding of my views you have omitted to do what otherwise would have been done, it may be well to correct the omission. I do not, however, think that there has been any such omission on your part.

Very truly yours, JOHN G. JOHNSON.

985 Complainant's counsel state that they understand that it is not necessary for them to rest before defendant proceeds to evidence; but for the information of the parties to the cause, will state that they have now introduced all their evidence-in-chief, except, possibly, some formal matters that they do not now know of, with the following exception: Questions have been repeatedly asked in this testimony concerning the figures and estimates submitted to the directors and officers of the Central Transportation Company preliminary to settling upon the amount of sixty-six thousand dollars ($66,000) per annum about January, 1885, and notice has been given to the defendants to produce some figures then taken by its officers. Complainant has found a paper relating to the matter, giving, as its counsel believes, a synopsis of the figures then submitted, which it produces now for the inspection of counsel if they desire it. The witness, Goodman, is, however, the only person who can explain this paper and testify as to when it was made, which, counsel understands was about the time of such negotiation. When Mr. Goodman returns from Europe, which will probably be in March, he will be asked to identify the paper and explain the figures.

With such exception, complainant has put in its testimony-in-chief.

Mr. Johnson states that he would like to see the paper referred to, which is handed to him by Mr. Burry. The following is a copy thereof:

986 *Comparative Statement of Earnings and Expenses of Cars in Central Transportation Company Lines on Basis of Accounts for Year* 1884.

Earnings of cars in C. T. lines during year:		
Sleeping cars	$927,659	
Parlor cars	187,608	
		$1,115,267 00
Number of cars to operate lines, 192.		
Average earnings per car	5,808 68	
Average cost of maintenance of car body and trucks as per clearing-house figures	2,421 00	
Average cost of maintenance of upholstery, bedding and equipment; and expenses for washing, conducting, operating, supplies, etc	2,579 00	
Average expenses yearly	$5,000 00	
Total expenses 192 cars		960,000 00
Net earnings 192 cars		155,267 00

Old Contract.

Maintenance of car body and trucks assumed by P. R. R. Co. 192 cars at $2,421	464,832 00
Total earnings and maintenance	619,099 00
Per car	3,224.40
Less rental to C. T. Co	264,000 00
Balance	$355,099 00

New Contract.

Net earnings	$155,267 00	
Per car	802.43	
Less rental to C. T. Co	66,000 00	
Net income		89,267 00
Deficit as compared with old contract		$265,832 00

Complainant's counsel gives notice that at the hearing in this cause set for February 29, 1888, they will call up for a decision the refusal of the witness Robertson to produce accounts of the complainant subsequent to July 31, A. D. 1886.

987 PULLMAN PALACE CAR COMPANY *vs.* CENTRAL TRANSPORTATION COMPANY.

708 WALNUT STREET, 20*th February*, 1888.

DEAR SIR: On page 798, your witness, Mr. Glosser, said that he made out a certain statement of repairs for Mr. Goodman and other railroad officials. Will you please produce it? If so, when?

Very truly yours, JOHN G. JOHNSON.

Samuel Dickson, Esq.

In pursuance of the above call, complainant produces as the only statement in its possession, in any way answering to the call, the following:

988 *Statement of the Cost of Repairs of Pullman Palace Cars Lately Transferred to Mileage Basis from Date of Assignment to Pennsylvania Railroad to Date of Transfer.*

No. of car.	Date of assignment.	Date of transfer.	Repairs.
121	August, 1870	Dec. 9, 1879	24,138 99
132	August, 1870	Dec. 9, 1879	23,748 92
133			
134			
135	Oct., 1870	Aug., 26, 1879	24,234 57
136	Nov., 1870	Mar. 1, 1880	25,557 82
137	Nov., 1870	Dec. 11, 1879	23,466 62
138	Feb., 1871	Dec. 9, 1879	21,764 34
142	Sept., 1872	Aug. 2, 1880	19,527 27
145	Oct., 1870	July 24, 1879	18,009 87
146	Oct., 1870	June 24, 1879	17,155 54
161	Dec., 1874	Jan. 3, 1880	10,531 77
175	Aug., 1871	Jan. 30, 1880	23,982 39
176	Sept., 1871	Jan. 3, 1880	21,059 27
178	Oct., 1871	July 1, 1880	19,858 07
180	Nov., 1871	July 2, 1879	17,228 40
181	Jan., 1872	April 8, 1880	18,859 16
182	Feb., 1872	Feb. 12, 1880	18,602 21
186	May, 1871	Sept. 1, 1879	21,592 71
188	Feb., 1871	Oct. 10, 1879	18,996 61
258	July, 1872	July 24, 1880	13,542 41
265	March, 1873	June 16, 1880	16,542 09
274	July, 1873	June 21, 1879	9,231 55
277	June, 1873	April 14, 1880	15,073 70
278			
280	Feb., 1873	May 18, 1880	19,119 93
281	March, 1873	Nov. 1, 1879	16,921 31
282	March, 1873	March 24, 1880	16,889 50
283	March, 1873	Jan. 15, 1880	17,405 77
288	May, 1873	April 20, 1880	15,934 21
293	August, 1873	July 11, 1879	12,885 54
295	September, 1873	July 19, 1879	15,897 87
297	Aug., 1873	June 11, 1879	12,202 05
			$545,260 31

Railroad clearing-house, Philadelphia, Pa., May 31, 1880.

JNO. F. GLOSSER,
Clearing-house Clerk.

To E. H. Goodman, Esq., sup't Cent. div.

989 And afterwards, to wit, on the 29th day of February, A. D. 1888, come the parties aforesaid, by their counsel aforesaid, and this cause being called for argument on motion by complainant for injunction to restrain defendant from prosecuting any suit at law brought by it against complainant upon the covenants of lease made February 17th, 1870, and having been argued by counsel for the respective parties on the 29th of February and March 1st, 1888, before Hon. Joseph P. Bradley, circuit justice, and Hon. William McKennan, circuit judge, and the court, not being fully advised in the premises, takes further time for the consideration thereof.

And afterwards, to wit, on the 2nd day of March, A. D. 1888, come the parties aforesaid, by their counsel aforesaid, and, the court being fully advised in the premises, the following opinion by Mr. Justice Bradley, denying motion for injunction, is filed:

990 *Opinion of Court on Renewed Motion for Injunction.*

PULLMAN PALACE CAR CO.
vs.
CENTRAL TRANSPORTATION CO. } March 2d, 1888.

BRADLEY, *Cir. Justice:*

Upon the renewed application for an injunction in this case we do not think that any new facts are presented which should induce us to change the conclusion formerly reached, to wit, that the injunction should be denied as regards the action brought for rent accruing prior to the first of July, 1886, when the complainants gave notice of their election to determine the lease and contract of 1870.

The ground of relief set up in the bill is that when, at the expiration of the contract with the Pennsylvania Railroad Company, in January, 1885, the complainants contemplated giving notice of their election to terminate the lease, in view of the reduction of net revenues below the amount of the rent reserved, the defendants, through their agents, induced and persuaded the complainants to adopt the other alternative of paying them an equitable sum or share of the net revenues that might be realized and as should be agreed upon, and that the complainants consented to this and acted upon that understanding in concluding a new contract with the Pennsylvania Railroad Company. The complainants contend that after
991 this arrangement had been gone into it was inequitable and unjust for the defendants to claim and sue for the original rent. This ground was insisted upon on the former motion; but it is contended that since then the facts have been more fully elicited by the proofs, and that it has been shown that the complainants actually gave notice to terminate the lease, but were induced to withdraw it and to proceed upon the other alternative. Though this is not the way in which the case is presented in the bill, we do not see that it makes any material difference in the case as far as the appli-

cation for an injunction is concerned. If the facts contended for are a good ground for relief at all, they are as available as a defence at law as in equity. They are set up for the purpose of showing that the condition subsequent created by the eighth article of the lease, the purpose of which was to cause the covenant to pay $264,000 per annum to cease, has been accomplished. Proof that that condition has been accomplished would be a legal defence to the action. Whether the pleadings in the action are adapted to the introduction of this kind of proof we do not know. That makes no difference in reference to this application. If the pleadings are defective and the time for amendment has not expired, the
992 proper amendments can be supplied.

The difficulty of proving the fact that the net revenues are less than $264,000 a year on account of the complication of the matters involved we do not regard as by any means such as to draw the case into equity. It is not a question of account arising upon a fiduciary relation, and does not involve the principles of such an account. It is necessary, it is true, for the complainants to show by their receipts and expenses that their net revenues are less than $264,000, but that may be done by a mode of proof very far short of that required from a trustee or agent in rendering an account to his beneficiary or principal. We do not suppose that the defendants would be entitled to call for vouchers or to be furnished with a detailed account.

The motion must be denied.

Endorsed: 44. Oct. sess., 1886. C. C. U. S., E. D. of Pa. Pullman's Palace Car Co. *vs.* The Central Transportation Co. Opinion. Filed Mar. 2, 1888. Samuel Bell, clerk.

993 In the Circuit Court of the United States for the Eastern District of Pennsylvania.

PULLMAN'S PALACE CAR COMPANY *vs.* CENTRAL TRANSPORTATION COMPANY. } No. 44. October Sessions, 1886.

The petition of the Pullman's Palace Car Company respectfully represents—

That on the 17th day of February, 1870, your petitioner entered into a contract of lease with the Central Transportation Company, wherein and whereby the Central Transportation Company leased unto your petitioner 119 railway sleeping cars, furniture, bed clothing, and apparel thereunto belonging or appertaining, for the term of ninety-nine years, upon a rental of two hundred and sixty-four thousand dollars ($264,000) a year, and assigned to your petitioner certain traffic contracts with certain railroad companies, as in the said lease mentioned, all of which will appear by reference to the terms of the lease hereunto annexed, marked Exhibit A.

That by the eighth clause of the said lease it was provided that in the event that any of the railroad companies mentioned in the

contracts assigned should at any time during the running of the agreement refuse to permit the cars of your petitioner to be
994 run on and over their respective lines of roads, so that by reason of such prevention or refusal the profits, income, and revenue derived from the other and remaining contracts with the other and remaining railroad companies should fall below the sum of two hundred and sixty-four thousand dollars ($264,000), then in that event your petitioner should have the right to declare said lease null and void and to surrender to said Central Transportation Company the property demised as aforesaid in and by said lease.

That certain railroad companies mentioned in the contracts assigned to your petitioner by the aforesaid contract of lease prior to the 28th day of June, 1886, refused to permit your petitioner to run its cars on or over their respective lines of railroad, and by reason of such refusal the profits, income, and revenue derived from the other and remaining contracts by the other and remaining railroad companies mentioned in the said contract fell below the sum of $264,000 per annum, by reason whereof and in pursuance of the authority in your petitioner vested by the terms of the said lease your petitioner did, on the 28th day of June, A. D. 1886, by resolution of its board of directors, declare the said contract of
995 lease between the said Central Transportation Company and your petitioner null and void, and wholly terminated the same and elected to surrender to the said Central Transportation Company the property demised as aforesaid in the said lease.

That your petitioner in the execution of the terms of the contract of lease in the event of its termination thereupon tendered to the said Central Transportation Company the cars and other property in its possession under the said lease, together with a certain sum of money, to wit, fifty-three thousand dollars ($53,000), estimated as the amount of money required to put the cars in proper repair; all of which will appear from Exhibit- B and C, hereto annexed and made part of this petition.

That the said cars so tendered consisted of the following:

First. Thirty-seven of the original demised cars then and now stored at Altoona and elsewhere, being cars numbered 13, 14, 22, 23, 30, 35, 38, 39, 40, 42, 57, 65, 71, 82, 86, 87, 88, 89, 91, 93, 94, 95, 96, 97, 98, 100, 106, 107, 108, 109, 110, 111, 112, 113, 114, 117, and 119.

996 Second. Cars numbered 122, 125, 126, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 169, 180, 184, 185, 186, 189, 252, 253, 261, 262, 264, 266, 267, 268, 269, 289, 290, 291, 292, and 315, and cars named Paoli, Arabian, Bolivia, Etna, Richmond, Peru, 88, Garden City, Queen City, Panama, Indiana, Planet, Belrose, Bellvue, Caspian, Corsican, Chatauqua, Monticello, Chili, all of which cars were by your petitioner in due course of business substituted in place of the following original demised cars, to wit, 1, 75, 76, 72, 85, 77, 78, 47, 58, 4, 25, 10, 7, 49, 50, 17, 19, 20, 21, 34, 41, 56, 102, 18, 92, 105, 24, 68, 3, 59, 80, 56, 5, 6, 51, 11, 12, 27, 8, 52, 69, 73, 74, 15, 90, 48, 2, 67, 115, 70, 55, 43, 44, 29, 9, 79, 16, 32, 99, 118, 81, 60, and 104.

That the said Central Transportation Company thereupon declined and refused to accept the tender of the said demised property, and has hitherto wholly refused and declined to accept the same; that afterwards, in a certain suit at law in a court in which this petition is entitled and filed No. 6, Oct. sessions, 1886, and which was an action to recover rent accruing under the terms of said contract of lease brought by the defendant herein against your peti-
997 tioner, your petitioner filed several pleas, and, among others, one as follows:

"And for a further plea in this behalf the defendant, by its attorney, says that said indenture of lease was void in law as between the parties thereto for the want of authority and corporate power on the part of the parties thereto to make and enter into said indenture of lease, and for that the same was in excess and in violation of the charters conferring the corporate powers on said plaintiff and of the purpose of their incorporation; and this the defendant is ready to verify. Wherefore it prays judgment whether the plaintiff ought to have or maintain its aforesaid action against it."

That afterwards, said cause coming on for trial at the April sessions, 1888, the said plea was by consideration of this court held to be good, and it was accordingly held and adjudged that the said contract of lease was wholly void, and that no action could be sustained thereon, and judgment of nonsuit was entered against the plaintiff in said cause.

That all the patent rights and railroad contracts assigned by said contract of lease had long before that time expired, and that of the other specific property so assigned there remained in existence and capable of return only the following cars, to wit, the cars
998 above designated and numbered as follows: 13, 14, 22, 23, 30, 35, 38, 39, 40, 42, 57, 65, 71, 82, 86, 87, 88, 89, 91, 93, 94, 95, 96, 97, 98, 100, 106, 107, 108, 109, 110, 111, 112, 113, 114, 117, and 119.

That since judgment was entered on the said plea as aforesaid your petitioner has offered to restore (and still offers to restore) the said property to said plaintiff or to have the same sold if plaintiff would consent thereto and the proceeds paid into the registry, subject to the order of this court, but the said plaintiff has refused to accept the restoration of said property or to participate by consent in any sale or other disposition thereof; that said cars have not been used since said judgment nor for many years prior thereto because they have been unfit for an- incapable of use on any railway; that they are being constantly deteriorated in value, being out of use by your petitioner, and are subject to a large and increasing charge for insurance, for watchmen, for storage, and for care and attention on the part of your petitioner — shows that it would be to the interest of all parties entitled to the said property or to their value, the premises being considered, if the said cars were sold, and their proceeds placed in proper custody to be forthcoming when properly awarded by your honorable court.

999 Your petitioner therefore prays that a master be appointed to make sale of the said cars now in its possession and tendered as aforesaid, at a time and place and after such advertisement

as may be directed by the court, and that upon such sale the proceeds thereof be deposited in the registry of the court, subject to its further order.

And it will ever pray, &c.

EDWARD S. ISHAM.
WAYNE MacVEAGH.
JOHN S. RUNNELLS.

1000 STATE OF ILLINOIS, } ss:
County of Cook, }

A. S. Weinsheimer, secretary of the Pullman Palace Car Company, being duly sworn according to law, deposes and says that the facts set forth in the foregoing petition are true.

A. S. WEINSHEIMER.

Sworn and subscribed to before me this 4th day of October, A. D. 1889.

[SEAL.] K. G. TODD,
Notary Public.

1001 EXHIBIT A.

This indenture, made this seventeenth day of February, A. D. one thousand eight hundred and seventy, between the Central Transportation Company, a corporation of the Commonwealth of Pennsylvania, having their place of business in the city of Philadelphia, of the first part, and Pullman's Palace Car Company, a corporation of the State of Illinois, having their place of business in the city of Chicago, of the second part.

Whereas, the parties hereto are engaged in the business of manufacturing railway cars, generally known as sleeping cars, under certain patents belonging to them respectively, and of hiring the same to railroad companies under written contracts, to be used and employed on and over the lines of the roads of said railroad companies, and receiving therefor income and revenue by the sale to passengers of the berths and accommodations therein; and

Whereas, the demands of the public for increased means of personal comfort and convenience in traveling, of avoiding repeated changes of cars over long routes of railroad, the necessity of affording, at fair and reasonable rates, these advantages, which cannot be extended by the railroad companies themselves, require that every possible means should be adopted to meet such demands, by avoiding the inconveniences and curtailing the expense incidental to the maintenance of the business management and organization of two separate corporations; and

Whereas, it is proposed that the party of the first part (having authority so to do under an act of the General Assembly of the Commonwealth of Pennsylvania, entitled "An act to extend the charter of the Central Transportation Company, to empower them to lease their property and increase their capital stock," and approved the ninth day of February, one thousand eight hundred and seventy, and duly accepted), shall demise, transfer, and set over unto the

party of the second part, their successors and assigns, all their cars contracts, and patent rights and personal property, and that the second party (having authority so to do under the said act of assembly, and by virtue of the powers in them vested by their act of incorporation from the State of Illinois) should take the same; and

Whereas, at a meeting of the directors of the first party
1002 held at Philadelphia on the eleventh day of February, one thousand eight hundred and seventy; and at a meeting of the directors of the second part, held in Chicago, on the sixteenth day of February, one thousand eight hundred and seventy, this present form of contract by and between the parties hereto was submitted for their approval, and the same being by them at said meetings approved, the respective presidents were authorized for, and as the act and deed thereof, the said parties of the first and second parts, duly to execute and deliver the same:

Now this contract witnesseth, that the party of the first part, for and in consideration of the money, covenants, and agreements hereinafter mentioned and contained on the part of the second party, their successors and assigns, to be paid, kept, and performed, hath granted, demised, transferred and set over, and by these presents do grant, demise, transfer and set over unto the second party, their successors and assigns and the second party take:

Item 1. All and singular one hundred and nineteen railway sleeping cars, furniture, bed clothing, and apparel thereunto belonging or appertaining.

Item ". All and singular their rights, interests, and claims of, in, and to sixteen contracts (copies of each whereof are hereto attached and made part hereof and numbered respectively No. 1, 2, 3, etc.), entered into by and between the party of the first part and the several railroad companies parties respectively thereto, for and in respect to the use and employment of said cars on and over the respective lines of said railroad companies.

Item 3. All and singular their right, title and claim of, in and to seventeen patent rights, secured by letters patent (an assignment whereof is hereto attached and made part hereof, and numbered "A"), as fully and entirely as the first party are, or may be, entitled to the same, and to any renewal or extension thereof.

Item 4. And generally all their personal property, rights, credits, moneys and effects, rights of action, moneys due and to become due from licenses heretofore granted:

To have and to hold the above-demised property and all income, revenue and profit to be derived therefrom, to the party of the second part, their successors and assigns as follows:

Item 1. The said one hundred and nineteen cars, furniture, bedding, bed clothing, and apparel, for and during the term of ninety-nine years, from the first day of January, A. D. one thousand
1003 eight hundred and seventy, to be fully completed and ended.

Item 2. Each of the said contracts for and during the full term of the duration of each thereof respectively.

Item 3. Each of the said patent rights for the full end and term of the duration of the letters patent therefor respectively, and for

the full end and term of any renewal or extension of the same respectively.

Item 4. All the said personal property, rights, credits, moneys and effects, rights of action, moneys due and to become due from licenses heretofore granted, for and during the said term of ninety-nine years, from the first day of January, A. D. one thousand eight hundred and seventy, or during the existence of said licenses, or of any renewal or extension thereof, all and every of which shall be taken subject to all debts and pecuniary liabilities of the first party up to the said first day of January, one thousand eight hundred and seventy, as set forth in Exhibit B.

In consideration whereof, the party of the second part covenants with the party of the first part as follows:

First. That they shall and will pay to the said first party, their successors and assigns, annually, the sum of two hundred and sixty-four thousand dollars ($264,000) in lawful money of the United States, during the entire term of ninety-nine years, as aforesaid; the same to be paid to the treasurer or other authorized officer, at their principal place of business, or office of said first party, in quarter-yearly installments of sixty-six thousand dollars ($66,000), the first quarter's payment to be made on the first day of April, one thousand eight hundred and seventy; and shall and will pay all debts and pecuniary liabilities of the first party, due and owing by them up to the first day of January, A. D. one thousand eight hundred and seventy, as set out in Exhibit B.

Second. That they shall and will, so long as the said assigned contracts exist, and for the period of any new or other contract with the said railroad companies, or either of them, or their successors and assigns, of the like general character, in good faith continue and carry on the business as authorized by their charter.

1004 Third. That they shall and will, during the said term of ninety-nine years, keep or cause to be kept in good order and repair, or renewed and reconstructed as often as may be needful, the said one hundred and nineteen cars, and the furniture, bedding, bed clothing, and apparel thereof.

Fourth. That in the event of the failure or omission of said second party, their successors or assigns, to pay any of the said quarterly payments for the period of thirty days after the same shall be due and payable, then, and in such case, this contract may, at the option of the party of the first part, be declared null and void, and it shall and may be lawful for them, or for any person or persons, or corporation or corporations, selected by them, either with or without any process or writs for such purpose, to take possession of and again to hold the said one hundred and nineteen cars hereby demised, or as the same may be renewed or reconstructed, as aforesaid, wherever the same may be found, with their furniture, bedding, bed clothing and apparel, and in such case the second party covenant and agree to deliver possession of said cars to such person or persons, or corporation or corporations so selected, and to assign and transfer to the said first party the said contracts or any new contracts with the said railroad companies for and in respect to

the use and employment of sleeping cars over the lines of railroads, and any unexpired patent right, or renewal or extension of the same, herrinbefore assigned and transferred, and shall and will cease to operate and employ, or cause to be operated and employed, any cars whatsoever on or over the said lines of railroads.

It being understood that such action on the part of the first party, in the said event, shall not release or discharge the second party, their successors or assigns, from liability, from damage and loss which may be sustained by said first party owing to any such breach of contract or default.

Fifth. That they will not assign or transfer this contract without the consent, in writing, of the party of the first part, nor make or create any debt, lien, or mortgage upon the property hereby demised, which can or shall in any manner take precedence of the rights of the first party under this contract, or in anywise to deprive
1005 the party of the first part from their right to claim and take said property under the terms hereof. And the said parties hereto further covenant and agree with each other as follows:

Sixth. That the parties hereto shall and will, at all proper times and manner, exert their influence to obtain renewals or new contracts with said railroad companies, for and in respect to the use and employment of the cars of the second party, on and over their lines of railroads, in carrying on their said business, and the first party shall and will not engage in the business of manufacturing, using or hiring sleeping cars, while this contract remains in full force and effect.

Seventh. That such renewal or new contract may be made in the name of the party of the second part, their successors and assigns, but in the event of the termination of this contract, under any of the clauses hereof, the same shall be thereupon assigned and transferred unto the party of the first part.

Eighth. In the evenet that any of the railroad companies mentioned in the assigned contract shall at any time during this agreement refuse to permit the cars of the second party to be run on and over their respective lines of roads, so that by reason of such prevention or refusal the profits, income, revenue derived from and under any other and remaining contracts with other and remaining railroad companies mentioned in the assigned contracts, shall fall below the sum of two hundred and sixty-four thousand — ($264,000) then and in that event said second party shall have the right either to declare this contract null and void, the surrender to said first party the said hereinbefore-demised property, or shall and will pay in like manner, in lieu of the said sum of two hundred and sixty-four thousand dollars ($264,000), such sum or share of the net revenue from the remaining lines of roads as the parties hereto may at that time agree upon.

Ninth. And the party of the second part covenant and agree with the party of the first part, that on the expiration of the said term of ninety-nine years, they will redeliver to the said first party
1006 the said one hundred and nineteen cars, furniture, bedding, bed clothing and apparel in like good order as the same now

are, with such additions, betterments, and improvements as shall be made thereto, or in any renewal or substitution, thereof, together with any unexpired contracts between said second party and any of the railroad companies mentioned in the assigned contracts, for and in respect to the use and employment of said cars on and over their lines of railroad.

In witness whereof, the said parties hereto have caused their respective corporate seals to be hereto affixed, and the same to be attested by the signatures of their respective presidents and secretaries the day and year first above written.

O. W. CHILDS,
President. [L. S.]

Attest: J. F. COTTRINGER, *Secretary.*

Witnesses:
G. C. FRANCISCUS.
J. EARNEST GOODMAN.

GEO. M. PULLMAN,
President. [L. S.]

Attest: CHAS. W. ANGELL, *Secretary.*

Witnesses:
WIRT DEXTER.
W. F. WHITEHOUSE.

1007 EXHIBIT B.

CHICAGO, *June 28th*, 1886.

To the Central Transportation Company, Philadelphia, Penna.

GENTLEMEN: Pullman's Palace Car Company herewith transmits to you a copy of a resolution of its board of directors terminating the lease made from you to it, dated February 17th, 1870, and there will be delivered to you by counsel for this company, who present this communication, a schedule of cars and money which this company now tenders you in satisfaction of the surrender provided for by it to you in section eight of said lease. These cars and money are now at your disposal, and as the cars are very bulky and scattered in location, and as no place of tender or surrender is provided for in said lease, said counsel for this company will confer with you as to the time and place at which the actual possession can be given you. This company is also ready to do any and all other acts and to execute and deliver any instruments in writing which, under the terms of said lease, you may be entitled to receive in order to make a complete and effectual surrender, and our said counsel are authorized to confer with you as to what may be required and to prepare the necessary papers for execution.

Yours truly, PULLMAN'S CAR COMPANY,
By GEO. M. PULLMAN, *President.*

1008 Whereas certain of the railroad companies mentioned in the contracts assigned to the Pullman's Palace Car Company

by the contract of lease between the Central Transportation Company, dated February 17th, A. D. 1870, have refused to permit said Pullman's Palace Car Company to run its cars on and over their respective lines of railroad, and by reason of such refusal the profits, income, and revenue derived from the other and remaining contracts with the other and remaining railroad companies mentioned in said contract have fallen below the sum of two hundred and sixty-four thousand dollars per annum; and

Whereas it is provided in said lease that in such event Pullman's Palace Car Company shall have the right to declare said lease null and void and to surrender to said Central Transportation Company the property demised in and by said lease:

Therefore be it

Resolved, That this company does hereby declare said contract between said Central Transportation and this company null and void and hereby wholly terminated, and elects to and hereby directs the surrender to said Central Transportation Company of the property demised in and by said lease.

Resolved further, That the president of this company is hereby authorized to sign and caused to be served all notices necessary to carry out and effectuate these resolutions, and to decide upon, direct, and cause to be made the surrender of said demised property, and to take all other steps and legal proceedings, including the surrender or assignment of any contract or contracts or any interest therein, that may be necessary in the premises.

(Signed) A. S. WEINSHEIMER, *Secretary.*

STATE OF ILLINOIS, }
County of Cook, } *ss:*

I, A. S. Weinsheimer, secretary of Pullman's Palace Car Company, do hereby certify that the above and foregoing is a true copy of the preamble and resolutions adopted at a meeting of the board of directors of said company, duly called and held at its general offices, in Chicago, Illinois, on the 28th day of June, A. D. 1886.

Witness my hand and seal of said company this June 28th, A. D. 1886.

(Signed) A. S. WEINSHEIMER, *Secretary.*

1009 EXHIBIT C.

To the Central Transportation Company.

GENTLEMEN: The following is the property Pullman Palace Car Company tenders you in connection with the resolutions of its board of directors and the letter of its president handed you herewith:

1st. Thirty-seven of said original demised cars, now stored at Altoona and elsewhere, being cars numbered 13, 14, 22, 23, 30, 35, 38, 39, 40, 42, 57, 65, 71, 82, 86, 88, 87, 89, 91, 93, 94, 95, 97, 98, 100, 106, 107, 108, 109, 110, 111, 112, 113, 114, 117, and 119.

2nd. The following cars, being cars numbered 122, 125, 126, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142,

143, 144, 145, 146, 147, 148, 169, 180, 184, 185, 186, 189, 252, 253, 261, 262, 264, 266, 267, 268, 269, 289, 290, 291, 292, 315, and cars named Paoli, Arabian, Bolivia, Etna, Richmond, Peru, 88, Garden City, Queen City, Panama, Indiana, Planet, Belrose, Bellvue, Caspian, Corsican, Chataqua, Monticelo, Chili, all of which cars were, by Pullman's Palace Car Company in due course of business, substituted in *palce* of the following original demised cars, to wit, 1, 75, 76, 72, 85, 77, 78, 47, 58, 4, 25, 10, 7, 49, 50, 17, 19, 20, 21,
1010 34, 41, 56, 102, 18, 92, 105, 24, 68, 3, 59, 80, 66, 5, 6, 51, 11, 12, 27, 8, 52, 69, 73, 74, 15, 90, 48, 2, 67, 115, 70, 55, 43, 44, 29, 9, 79, 16, 32, 99, 118, 81, 60, 104.

3d. The original demised cars numbered 26, 28, 31, 33, 36, 37, 45, 46, 53, 54, 61, 62, 63, 64, 83, 84, 101, 103, and 116 were destroyed and not replaced, and Pullman's Palace Car Company tenders $57,000 in lieu thereof as being a fair value thereof.

4th. Said original demised cars first above enumerated are not in good repair. A careful estimate made of the amount required to put them in repair makes the amount so required $53,000, and that amount is now tendered to you.

Endorsed: Oct. sess., 1886. No. 44. C. C. U. S. Pullman's Palace Car Company *vs.* Central Transportation Company. Petition for sale of cars. Isham, Lincoln, & Beale & MacVeagh. Filed Oct. 18, 1889. Samuel Bell, clerk.

1011 In the Circuit Court of the United States for the Eastern District of Pa.

PULLMAN PALACE CAR COMPANY *vs.* CENTRAL TRANSPORTATION CO. } In Equity. October Sessions, 1886. No. 44.

On motion of Wayne MacVeagh, counsel for plaintiff, and with leave of the court, the bill heretofore filed in this case is dismissed at the plaintiff's cost.

Endorsed: 44. October sessions, 1886. In the C. C. U. S. for the E. D. of Pa. In equity. Pullman Palace Car Co. *vs.* Central Transportation Co. Motion to dismiss bill. MacVeagh. Filed Apr. 6, 1891. Samuel Bell, clerk.

1012 And afterwards, to wit, on the 25th day of April, A. D. 1891, come the parties aforesaid, by their counsel aforesaid, and this cause being called for argument before the Hon. Marcus W. Acheson, circuit judge, on motion by complainants for leave to dismiss bill, and having been argued by counsel for the respective parties, and the court, not being fully advised in the premises, takes further time for the consideration thereof.

1013 *Motion for Leave to File Cross-bill.*

PULLMAN'S P. C. CO. *vs.* CENTRAL T. CO. } U. S. C. C., Oct. Sess., 1886. No. 44.

And now, this 25 day of April, 1891, the defendants do move the court for leave to file a cross-bill, in which they will avail themselves of the tenders of relief made by complainants in their bill. We will pray such relief as may be pertinent to the case made by the bill.

Endorsed: # 44. October sess., 1886. C. C. U. S., E. D. of Pa. Pullman's Palace Car Co. *vs.* Central Transportation Company. Motion for leave to file cross-bill. Filed, by leave of court, April 25, 1981. Samuel Bell, clerk.

1014 And afterwards, to wit, on the 10th day of December, A. D. 1891, come the parties aforesaid, by their counsel aforesaid, and this cause being called for argument before the Hon. Marcus W. Acheson, circuit judge, and Hon. William Butler, district judge, on complainant's motion for leave to dismiss bill and on respondent's motion for leave to file cross-bill, and having been argued by counsel for the respective parties, and the court, not being fully advised in the premises, takes further time for the consideration thereof.

And afterwards, to wit, on the 14th day of December, A. D. 1891, come the parties aforesaid, by their counsel aforesaid, and the court, now being fully advised in the premises (by Butler, J., Acheson, cir. J., concurring), file the following opinion, to wit:

1015 PULLMAN'S PALACE CAR COMPANY *vs.* CENTRAL TRANSPORTATION COMPANY. } October Session, 1886. No. 44.

Surplaintiff's motion to dismiss and defendant's motion for leave to file cross-bill.

BUTLER, *J.*:

The bill which the plaintiff asks leave to withdraw avers (among other things) that the lease therein named is invalid; and, furthermore, that (if it is not) the plaintiff is authorized by its eighth section and the happening of a contingency therein stated to terminate it on notice to the defendant; that the contingency has happened, the authority been exercised, and notice given. It therefore prays the court to enjoin the defendant against proceeding at law to collect rent under the lease to assist the plaintiff in making delivery of the leased property, and in ascertaining what compensation should be rendered to the defendant for its previous use, and generally to afford its aid in settling the controversy which has arisen out of the

transactions between the parties and terminating finally their relations.

The court, acknowledging the plaintiff's right to terminate the lease under the circumstances stated, granted an injunction against proceeding at law to recover rent accruing subsequently to
1016 such notice, and decline to interfere with an action then pending brought to recover rent previously due, because the question of validity raised could be interposed and decided on the trial thereof. Subsequently on such trial and review by the Supreme Court the lease was found to be invalid.

The plaintiff in the bill now seeks to discontinue the proceedings under it, while the defendant endeavors, through the instrumentality of a cross-bill, to avail *him*self of its use as a means of recovering possession of *his* property or its equivalent and compensation for the plaintiff's enjoyment of it under the lease.

We do not think the plaintiff's motion should prevail. The propriety of allowing discontinuances in equity depends on the question whether defendants may be prejudiced thereby. A decree or decretal order entered in the proceedings is usually a conclusive answer to the application. Here not only was such an order entered, but it now appears that the proceeding or a similar, independent one commenced by *him*self is the defendant's only means of enforcing *his* rights—rights which the bill in a measure
1017 concedes. The principal object of the proceeding originally was to accomplish the object which the defendant now seeks, and considerable testimony has been taken with a view to this end. The defendant would therefore be seriously prejudiced by its discontinuance. Not only would *he* lose the benefit of this testimony, but *he* would also be delayed and might be compelled to seek the plaintiff in another jurisdiction.

The object of the cross-bill is to enable the defendant to assume an aggressive attitude in the proceeding and to use it as a means of settling and closing up the entire controversy on which it is founded. This object seems proper and commendable, and we do not find anything in the rules governing equity pleading which forbids its allowance. The decisions in which it has been held that cross-bills come too late after answers have been filed; that they should be presented as soon as practicable, so as to avoid delaying the plaintiff's efforts to obtain a trial, are not applicable to the circumstances of this case.

The plaintiff's motion must therefore be dismissed and the defendant's allowed.

Acheson, C. J., concurs.

Endorsed: 44. Oct. sess., 1886. C. C. U. S., E. D. of Pa. Pullman's Palace Car Co. *vs.* The Central Transportation Co. Opinion dismissing motion and allowing defendant's motion. Filed Dec. 14, 1891. Samuel Bell, clerk.

1018 United States Circuit Court for the Eastern District of Pennsylvania.

PULLMAN PALACE CAR COMPANY *vs.* CENTRAL TRANSPORTATION COMPANY. } October Sessions, 1886. No. 44.

To the honorable the judges of said court:

The Central Transportation Company, the defendant in the above cause, brings this its cross-bill against Pullman's Palace Car Company, complainant therein.

And thereupon your orator complains and says:—

1. In pursuance of the agreement entered into between the complainant and defendant on the seventeenth day of February, 1870, annexed to the bill filed in this cause as Exhibit A, on or about the date of said agreement, all the property described in said agreement was delivered by the Central Transportation Company to Pullman's Palace Car Company, and has ever since remained in the possession of the latter, and in its care and under its control. The property thus delivered to said palace car company included, *inter alia*, one hundred and nineteen cars, with their furniture, bedding, bed clothing and apparel; exceedingly valuable contracts for transportation which had been theretofore entered into between the transportation company and various railroad companies, which contracts are particularly described in the bill filed; valuable patent rights; and other personal property, rights, credits, moneys and effects belonging to said transportation company.

1019 2. Your orator is unable to say, because of the lack of information of facts, which, practically, are solely within the knowledge of the palace car company, what disposition has been made by it, of the said one hundred and nineteen cars, furniture, bedding, bed clothing and apparel, and of the other property so delivered. It is believed by your orator, and therefore it is averred, that some of said cars and apparel were disposed of for large sums of money, the amount of which, for the reason above set forth, is unknown to your orator, but is known to said palace car company.

It is believed, and therefore it is averred, that most of said cars and apparel were permitted to become out of repair whilst in the custody of said palace car company, and that all of them have either been actually destroyed or disposed of, or are now, by reason of the failure to repair, renew and properly to care for the same, utterly worthless.

It is impossible for your orator to say what disposition has been made of the patent rights transferred to said palace car company, and of the other property transferred to it. The information concerning these matters is within the exclusive control of the said car company.

3. All the property transferred under the said agreement of the 17th of February, 1870, by your orator to the said car company has ever since remained in the possession of the latter, and has

been used by it. From time to time the said car company has made renewed agreements with the railroad companies with whom contracts existed with your orator, at the time of said agreement, which contracts, by virtue of said agreement, were transferred to the car company. The nature and extent of the contracts thus entered into, and now by way of renewal or otherwise still practically subsisting, is unknown to your orator, full information concerning the same being within the exclusive possession of said car company.

The said car company is now operating its cars on the lines of railroads belonging to the railroad companies with which your orator had contracts at the time of making said agreement,
1020 and from said purchasers is deriving, and for many years past has been deriving, large profits by reason of said operations.

Some of said new agreements entered into by the car company with said railroad companies, by way of renewal of said former contracts, were largely procured by the assistance rendered to said car company by your orator.

4. The said car company has, since the execution of the agreement of the 17th of February, 1870, by reason of the same and of the property transferred to it by your orator thereunder, derived very large profits which it has converted to its own use, and for which it has never accounted to your orator.

5. The said car company has, from time to time, since the making of said agreement, until a time hereinafter stated, paid over to your orator the annual sum of $264,000, for which payment it is entitled to credit in any accounting which may be taken. The last payment thus made was on the first day of January, 1885, and the said car company has never accounted to your orator since that date for any amount of money received by it from the use of the aforesaid property delivered to it under, and by virtue of, the aforesaid agreement.

6. In the month of June, 1886, the said car company pretended to cancel the said agreement for certain assigned reasons which were false. After said cancellation it made to your orator a certain deceptive tender of delivery, in the words set forth in Exhibit F attached to the original bill.

7. Your orator is advised that said tender was insufficient for, *inter alia*, the following reasons:—

(*a.*) The cars which in said tender were claimed to have been stored at Altoona, if the same were there stored, were then utterly worthless by reason of the past use and neglect to repair of said palace car company.

(*b.*) The cars specified in the second paragraph of Exhibit F were not substituted cars, and were not cars which had ever belonged to your orator.

1021 (*c.*) The cars specified in the third paragraph of said Exhibit F, if the same had been destroyed, were worth very much more money than was tendered as their value. Your orator

avers that a much larger sum was actually received by said car company by reason of the destruction of said cars.

(*d.*) No tender was made of any bedding, bed clothing or furniture, or apparel of the cars which had been originally delivered to the said car company.

(*e.*) No tender was made of the patent rights and other property which had been transferred to said car company.

(*f.*) No offer was made to transfer or to assign the contracts for transportation which had been delivered under the said agreement of February, 1870, to said car company, nor the new contracts and renewals thereof.

(*g.*) No tender was made of any amount of money derived from the use of the property which was delivered to the car company under said contract.

(*h.*) No tender was made by said car company to your orator of compensation for the use of the aforesaid property.

8. Since the filing of the bill and answer in the present suit the Supreme Court of the United States has decided that said agreement of February 17th, 1870, is invalid by reason of the same having been *ultra vires*, and for other reasons. The said agreement, under such interpretation, is, therefore, as your orator is advised, null and void.

9. It was, and is, the duty of the said car company to return to your orator all the property which it obtained from it as aforesaid, by virtue of said agreement of the 17th of February, 1870, including, *inter alia*, the patent rights which were delivered to it, the one hundred and nineteen cars, together with the bedding, bed clothing and apparel of the same, the contracts for transportation which were assigned to it, and all new contracts and renewals thereof entered into with any of the railroad companies with whom there were contracts at the time of making said agreement with your orator.

1022 If it be not within the power of the said car company to make such delivery, then, as your orator is advised and therefore avers, it is its duty to deliver an equivalent therefor, and to account for the profits which it has derived under and by reason of the property delivered to it under said agreement.

It is further the duty of said car company, as your orator is advised and therefore avers, to fully account for all profits which it derived from the use of said property.

10. Your orator is advised and therefore avers that the said car company now holds all contracts for transportation made by it with railroad companies with whom there were transportation contracts with your orator at the time of said agreement of the 17th of February, 1870, in trust for your orator, with a duty to account for the profits derived therefrom.

Being without an adequate remedy at law, your orator prays equitable relief as follows:

(*a.*) An account by the said car company of all the profits which it has derived since the making of said agreement of the 17th of

February, 1870, by the use of the property transferred to it under said agreement by your orator.

(*b.*) A decree that the amount found due by said accountant for said use of said property shall be paid over to your orator.

(*c.*) A decree that the said car company is the trustee for your orator of all contracts for transportation, whether original, new or renewals, held by it with railroad companies, with which there were contracts of transportation with your orator at the time of making said agreement of the 17th of February, 1870.

(*d.*) A decree ordering the said car company to pay to your orator all such sums as shall be due to it by said company as such trustee, and that it shall, in the future, from time to time, account for the sums which shall be due by reason of future operations under said contracts.

1023 (*e.*) Discovery and an account by the said car company of its use and disposition of the property turned over to it by your orator, and a delivery by said car company to your orator of all such property in proper order and condition, or if this cannot be done, a decree that the value thereof shall be paid to your orator, and that all sums derived from said property shall be paid over.

(*f.*) General relief.

(Signed) JOHN G. JOHNSON,
For Central Transportation Company.

1024 Circuit Court of the United States for the Eastern District of Pennsylvania. In Equity.

PULLMAN'S PALACE CAR COMPANY *vs.* CENTRAL TRANSPORTATION COMPANY. } No. 44. October Sessions, 1886.

Cross-bill of Central Transportation Company.

To the within-named Pullman's Palace Car Company:

You are hereby notified and required, within fourteen days after service hereof on you, exclusive of the day of such service, to cause an appearance to be entered for you in the circuit court of the United States for the eastern district of Pennsylvania, to the within bill of complaint, and to observe what the said court shall direct.

Witness my hand at Philadelphia, this — day of ——, one thousand eight hundred and ninety-one.

JOHN G. JOHNSON,
For Central Transportation Company.

NOTE.—If you fail to comply with the above directions, by entering an appearance in the prothonotary's office within fourteen days, you will be liable to have the bill taken *pro confesso*, and a decree made against you in your absence.

Filed Dec. 14, 1891.

SAMUEL BELL, *Clerk.*

1025 *Complainant's Demurrer No.* 1 *to Defendant's Cross-bill.*

United States Circuit Court for the Eastern District of Pennsylva

PULLMAN'S PALACE CAR COMPANY *vs.* CENTRAL TRANSPORTATION COMPANY. } October Sessions, 1886. 44.

The demurrer of Pullman's Palace Car Company, complainant the cross-bill of The Central Transportation Company, defend

This complainant, by protestation, not confessing or acknowle ing all or any of the matters and things in the said cross-bill tained to be true in such manner and form as the same are ther and thereby set forth and alleged, demurs to said cross-bill, for causes of demurrer shows:

First. That the defendant, the said Central Transportation C pany, has not in and by its said cross-bill made or stated suc cause as entitles it in a court of equity to any discovery or re from or against this complainant touching the matters contai in the said cross-bill or any of such matters.

Second. That it appears that this court has no jurisdict
1026 of this case.

Third. That the said cross-bill is filed contrary to the p tice of this court and under circumstances in which a cross-bil not allowed.

Fourth. That the said cross-bill was filed after the plaintiff moved to dismiss *his* bill of complaint in said cause.

Wherefore, and for divers other good causes of demurrer app ing in the said cross-bill, this complainant demurs to the said cr bill and to the matters and things therein contained, and prays judgment of this honorable court whether the complainant shal compelled to make any further or other answer to the said cross- and prays to be dismissed with its reasonable costs in this be sustained.

By WAYNE MACVEAGH,
Solicitor for Complainan

I certify that, in my opinion, the foregoing demurrer of The P man Palace Car Company, complainant, to the cross-bill of The C tral Transportation Company, defendant, is well founded in and proper to be filed in the above cause.

EDW'D S. ISHAM.
Solicitor and of Counsel for Complainan

1027 STATE OF NEW YORK, } *ss.:*
County of New York, }

Horace Porter on oath states that he is vice-president of The P man Palace Car Company, the complainant in the above suit; t he has read the foregoing demurrer to the cross-bill of the Cen

Transportation Company in this suit, and that the same is not interposed for the purpose of delaying said suit or any proceedings therein.

HORACE PORTER.

Subscribed and sworn to this 31st day of March, 1892, before me—
S. W. BRETZFIELD,
Notary Public (79), *N. Y. Co*

Endorsed: October sess., 1886. No. 44. C. C. U. S. Pullman's Palace Car Company *vs.* Central Transportation Company. Complainant's demurrer No. 1 to defendant's cross-bill. MacVeagh. Filed Ap'l 16, 1892. Samuel Bell, clerk.

1028 *Complainant's Demurrer No. 2 to Defendant's Cross-bill.*

United States Circuit Court for the Eastern District of Pennsylvania.

PULLMAN'S PALACE CAR COMPANY *vs.* CENTRAL TRANSPORTATION COMPANY. } October Sessions, 1886. No. 44.

The demurrer of Pullman's Palace Car Company, complainant, to the cross-bill of Central Transportation Company, defendant.

This complainant, by protestation, not confessing or acknowledging all or any of the matters and things in the said cross-bill contained to be true in such manner and form as the same are therein and thereby set forth and alleged, demurs to so much of said cross-bill as is contained in paragraphs (*c*) and (*d*), in section 10 thereof, in which paragraphs defendant prays "a decree that the said car company is the trustee for your orator of all contracts for transportation, whether original, new, or renewals, held by it with railroad companies with which there were contracts of transportation with your orator at the time of making said agreement of the 17th
1029 of February, 1870," and "a decree ordering the said car company to pay to your orator all such sums as shall be due to it by said company as such trustee, and that it shall in the future from time to time account for the sums which shall be due by re-son of future operations under such contracts," and for cause of demurrer shows that the defendant, the said Central Transportation Company, has not in and by its said cross-bill made or stated such a cause as entitles it in a court of equity to any discovery or relief from or against this complainant as to the matters hereinbefore specified or any of such matters. Wherefore, and for divers other good causes of demurrer appearing in the said cross-bill, as to so much thereof as hereinbefore is set forth, this complainant demurs, and prays the judgment of this honorable court whether it shall be compelled to make any further answer to such parts of the said cross-bill as *is* so demurred to as aforesaid.

By WAYNE MACVEAGH,
Solicitor for Complainant.

I certify that, in my opinion, the foregoing demurrer of The Pullman Palace Car Company, complainant, to the cross-bill of The Central Transportation Company, defendant, is well founded in law and proper to be filed in the above cause.

EDW'D S. ISHAM,
Solicitor & of Counsel for Complainant.

1030 STATE OF NEW YORK, } ss:
County of New York, }

Horace Porter on oath states that he is vice-president of The Pullman Palace Car Company, the complainant in above suit; that he had read the foregoing demurrer to the cross-bill of the Central Transportation Company in this suit, and that the same is not interposed for the purpose of delaying said suit or *of* any proceedings therein.

HORACE PORTER.

Subscribed and sworn to this 31st day of March, 1892, before me—
S W. BRETZFIELD,
Notary Public (79), *N. Y. Co.*

Endorsed: October sess., 1886. No. 44. C. C. U. S. Pullman's Palace Car Company *vs.* Central Transportation Company. Complainant's demurrer No. 2 to defendant's cross-bill. MacVeagh. Filed April 16, 1892. Samuel Bell, clerk.

1031 *Complainant's Demurrer No.* 3 *to Defendant's Cross-bill.*

United States Circuit Court of the Eastern District of Pennsylvania.

PULLMAN'S PALACE CAR COMPANY *vs.* CENTRAL TRANSPORTATION COMPANY. } October Sessions, 1886. No. 44.

The demurrer of Pullman's Palace Car Company, complainant, to the cross-bill of Central Transportation Company, defendant.

This complainant, by protestation, not confessing or acknowledging all or any of the matters and things in the said cross-bill contained to be true in such manner and form as the same are therein and thereby set forth and alleged, demurs to so much of said cross-bill as is contained in paragraphs (*a*) and (*b*), in section 10 thereof, in which paragraphs defendant prays "an account by the said car company of all the profits which it has derived since the making of said agreement of the 17th of February, 1870, by the use of the property transferred to it under said agreement by your orator," and "a decree that the amount found due by said accountant for said use of said property shall be paid over to your orator," and for cause of demurrer shows that the defendant, the said
1032 Central Transportation Company, has not in and by its said cross-bill made or stated such a cause as entitles it in a court

of equity to any discovery or relief from or against this complainant as to the matters hereinbefore specified or any of such matters.

Wherefore, and for divers other good causes of demurrer appearing in the said cross-bill, as to so much thereof as hereinbefore is set forth, this complain-t demurs, and prays the judgment of this honorable court whether it shall be compelled to make any further answer to such parts of the said cross-bill as *is* so demurred to as aforesaid.

By WAYNE MacVEAGH,
Solicitor for Complainant.

I certify, in my opinion, the foregoing demurrer of The Pullman's Palace Car Company, complainant, to the cross-bill of The Central Transportation Company, defendant, is well founded in law and proper to be filed in the above cause.

EDWARD S. ISHAM,
Of Counsel for Complainant.

1033 STATE OF NEW YORK, } ss:
County of New York, }

I Horace Porter on oath states that he is vice-president of Pullman's Palace Car Company, the complainant in above suit; that he has read the foregoing demurrer to the cross-bill of the Central Transportation Company in this suit, and that the same is not interposed for the purpose of delaying said suit or *of* any proceedings therein.

HORACE PORTER.

Subscribed and sworn to this eleventh day of April, —, before me—

S. W. BRETZFIELD,
Notary Public (79), *N. Y. Co.*

Endorsed: No. 44. October sess., 1886. C. C. U. S. Pullman's Palace Car Company *vs.* Central Transportation Co. Complainant's demurrer No. 3 to defendant's cross-bill. MacVeagh. Filed Apr. 16, 1892. Samuel Bell, clerk.

1034 And afterwards, to wit, on the 21st day of June, A. D. 1892, come the parties aforesaid, by their counsel aforesaid, and this case being called for argument on complainant's demurrers to defendant's cross-bill, before Hon. William Butler, district judge, and having been argued by counsel for the respective parties, and the court, not being fully advised in the premises, takes further time for the consideration of the same.

And afterwards, to wit, on the 12th day of July, A. D. 1892, come the parties aforesaid, by their counsel aforesaid, and the court, now being fully advised in the premises, enters the following order, to wit:

1035 *Order Overruling Demurrers.*

Circuit Court of the United States, Eastern District of Pennsylvania.

PULLMAN'S PALACE CAR COMPANY *vs.* CENTRAL TRANSPORTATION COMPANY. } No. 44. Oct. Sess., 1886. In Equity.

And now, to wit, this 12th day of Juld, A. D. 1892, the above cause having come on to be heard at the present April sessions of this court upon demurrers filed by the complainant April 16th, 1892, to the cross-bill of respondent, and having been argued by counsel for the respective parties and duly considered by the court, it is now ordered that the demurrers be, and the same are, overruled, with leave, however, to present the question again on final hearing.

Endorsed: 44. Oct. sess., 1886. C. C. U. S., E. D. of Pa. Pullman's Palace Car Co. *vs.* Central Transportation Co. Order overruling demurrers. Filed Jul- 12, 1892. Samuel Bell, clerk.

1036 United States Circuit Court for the Eastern District of Pennsylvania.

PULLMAN'S PALACE CAR COMPANY *vs.* CENTRAL TRANSPORTATION COMPANY. } October Sessions, 1886. No. 44.

To the honorable the judges of said court:

The defendant in the above-entitled cross-cause, answering the said cross-bill in accordance with the order of the court made thereon to that effect, says:

1. That it admits that under and in pursuance of the agreement or contract of lease of the seventeenth day of February, 1870, mentioned in the first paragraph of said cross-bill, there was delivered to it and it received the property mentioned in said agreement and schedules thereto attached, copies of which schedules of the contracts and the debts of the cross-complaint are attached to and made a part of this answer and marked "Exhibit A."

There are also attached Exhibit B, being a statement of the cars delivered at or about the 17th of February, 1870, and Exhibit C, being a statement of the contracts of said cars when so delivered.

And this defendant avers that all of the said property, contracts, patent rights, money, and effects was delivered to and received by this defendant in pursuance of the said contract of lease and for the purpose of being used and applied by it in the performance of said contract and of promoting the purposes for which said
1037 contract was made, and not otherwise; but denies that the same has, as averred in said cross-bill, ever since remained in its possession and in its care and under its control, except as

hereinafter stated; that all of said railway contracts expired by lapse of time, and that none of them reserved any right of renewal of the Central Transportation Company or made any provision therefor; and that all the said patent rights also expired regularly by lapse of time under the provisions of law.

2. This respondent says that with the one hundred and nineteen cars it received bedding, bed clothing, and other articles constituting the equipment then belonging to such cars, being either in the cars or in the store-rooms of the company, as shown in Exhibit C; that the same was immediately carried into use in the service of the Pullman Company and was worn out and consumed in such use or destroyed, and this respondent is unable to state the actual value of said equipment or the amount of it more fully than has already been, and is, done in the schedule showing said property as accurately as is within the power of respondent. Respondent says that said property has been long in use, and was worn, and not of the value of new material.

That the sum of $63,998.69, being the balance of cash in the treasury of the Central Transportation Company, was to have been transferred to and received by this defendant in pursuance of said lease, but that the said transfer was to be made "as an offset to or in consideration of said company having assumed all the debts and unliquidated claims against the Central Transportation Company arising from their construction of new cars or other causes, as required by the term of the lease;" and that in and by the said lease and the schedules appended thereto the aggregate amount of $46,983.08 of such indebtedness was specified and ascertained as being such indebtedness of the transportation company to be paid by the Pullman Company, but that in fact, by arrangement and as a matter of convenience, the said indebtedness to the said amount of $46,983.08 was actually paid by the Central Transportation
1038 Company, and only the amount of seventeen thousand dollars was transferred and paid over in cash to the Pullman Company on the thirteenth day of April, A. D. 1870, in pursuance of the said lease.

Respondent says that the said one hundred and nineteen sleeping cars were taken only incidentally and as a part of the general and primary purpose of said contract to transfer to the Pullman Company all the assets and the entire business of the Central Transportation Company; that this purpose had its inception in the wish of the Pennsylvania Railroad Company to secure the Pullman service upon its lines, first, because of its connection with other systems of railway, for the Pullman Company had at that time already extended its system over the principal Southern and Western roads and to the Pacific coast, and, secondly, because the cars and service of the transportation company were unsatisfactory to the traveling public and objectionable to the railroad company, and the Pennsylvania Railroad Company had been informed by the agents of the Union and Central Pacific railroads that the continuance of the Central Transportation cars was diverting travel from the Pennsylvania system and throwing the great bulk of it over competing

Microcard Editions
An Indian Head Company
A Division of Information Handling Services
5500 S. VALENTIA WAY
ENGLEWOOD, COLORADO TEL. NO. 303-771-2600

CARD 7

lines using the Pullman cars. The Pennsylvania Railroad Company, upon which lines eighty-four of these cars were then running, had already determined not to permit them to continue unless remodeled and improved, and it accordingly conferred with and made overtures to the Pullman Company looking to the use of its system upon its lines, in order to secure a valuable interchange of passenger business with Western lines and that improvement in the service which the public demanded. It was necessary, however, to make some arrangement with the Central Transportation Company, as that company held a contract which had fourteen years to run covering the lines of the Pennsylvania Railroad Company, and negotiations to that end resulted in the execution of the contract of lease aforesaid, under which this respondent acquired the one hundred and nineteen cars above mentioned. The said cars, however, were at the time they were thus transferred to the respondent entirely unfit for service over the roads with which the Central
1039 Transportation Company held the contracts which were assigned and transferred under the said contract of lease, and were unsatisfactory to the railroad companies with which said contracts existed. The original construction of said cars was such as made it impracticable and impossible, by repairs or reconstruction, to bring them to the standard of such cars as the railroad companies would accept the service of and permit to be run upon their lines. Some of them were the original cars built for experimental purposes when sleeping cars were first introduced, and all were of light construction and below the standard that had come to be required when said cars were transferred. Accordingly, in the very first year of the said contract of lease some of the railroad companies refused to run these cars upon their roads, and the Pullman Company had to dispose of them, and to build or provide superior ones to take their place. The said cars were from time to time condemned by the railroad companies and gradually but rapidly put out of use. While a very few of the better ones have been remodeled and reconstructed so as to be made available for certain incidental and subordinate kinds of service, such cars were so far remodeled and reconstructed as practically to have ceased to be the same cars at all, and that at an expense probably exceeding the original cost of said cars. The value of the said one hundred and nineteen cars at the time of the transfer was very small, and not exceeding probably an average of $4,000 per car. It was substantially true that in a very short time after the said cars were transferred not one of the original Central Transportation cars remained in or was fit for service. Exhibit B shows, with as much accuracy as is now possible, the time when each of said cars was withdrawn from service and ceased to be used in the performance of the service undertaken under said contract of lease, and shows also which of said cars are still in existence, and also as to such of said cars as is no longer in existence the amount of money, if any, received by or on account of said cars on sale or destruction thereof. But respondent says that the amounts so shown as received for or on account of said cars do

not indicate the value of said cars in any instance, nor a price
1040 received therefor at the disposition thereof, but to a large degree represent a concession or contribution made by the railroad companies as the result of negotiation with the Pullman Company, and as inducement to the Pullman Company to consent to the abandonment of said cars from service on the railway lines, and to the substitution of superior and more costly cars in the place thereof, made necessary by the improving character of the service and the demands of the traveling public; and in some cases also includes the equipment contained in said cars.

3. Respondent says that from time to time the said agreements or contracts of the said transportation company with the said several railway companies for transportation expired by lapse of time, and it admits that from time to time it has made new agreements with the said several railway companies or some of them. As to whether the nature and extent of the said new contracts is unknown to cross-complainant, this respondent cannot say. It denies that any of the said railway contracts originally assigned and made with the said Central Transportation Company reserved any right of renewal to the Central Transportation Company, or made any provision therefor, and respondent denies that the Central Transportation Company has any right or interest whatever in the said new contracts, or any of them; and respondent denies the averment of said bill that said new agreements, or any of them, were largely or in any degree procured by assistance rendered to this respondent by said cross-complainant, with the possible exception of some unavailing efforts of one or two persons who were directors of the Central Transportation Company to aid in securing, in 1885, a more favorable contract from the Pennsylvania Railroad Company than was obtained.

Respondent admits that it is now operating its cars on lines of railroad belonging to some of the railroad companies with which the cross-complainant had contracts at the time of making said contract of lease, but it avers that said contracts long ago expired, and that said cross-complainant has no right, title, or interest whatever in any profits derived by reason of said operation.

1041 4. Respondent says that as from time to time the cars received from said transportation company were worn out, destroyed, or withdrawn from service, other cars owned by respondent were put upon the lines of railway in their places, as hereinbefore stated by respondent; that not only were the cars received from the said transportation company inadequate in their character for the service required to be performed under the contract of lease, but they were also insufficient in number, and that almost the entire service performed under said contract of lease upon the several lines of railway has been performed by cars owned by the Pullman Company, and by the use of the capital of the Pullman Company, and that the part performed by the capital or property derived from the transportation company has been relatively insignificant, and it denies that it has derived very large profits which it has converted to its own use, and for which it has never

accounted to respondent, from property transferred to it by said cross-complainant under said contract of lease, but avers that said profits, if any have been so derived, have been exceedingly small, and denies that it has received any profits whatever in which said cross-complainant has any right, title, or interest whatsoever.

5. Respondent says it is true that it has from time to time, since the making of said contract of lease and until the first day of January, 1885, paid over to said cross-complainant, according to the provisions of said contract of lease, the annual sum of $264,000, making in all the total amount of about $3,960,000, and that it is entitled to credit for that amount, with allowances of interest thereon, in any accounting which may be had between it and the cross-complainant; and respondent believes that said amount far exceeds all net earnings and profits of any kind derived from any property received from cross-complainant under said lease. Furthermore, the respondent says that it has from time to time since the transfer of said property paid, laid out, and expended thereon, for repairs, a large amount of money, and also for other expenses incidental to or connected therewith a large amount
1042 of money, for all of which this repondent will be entitled to like credit. Respondent admits that the last installment of such annual payment of $264,000 was made on or about the first day of January, 1885, and that no other has been made, for the reason, among others, that the said contract of lease, in pursuance of the provisions of which said payments were made, has been by this court and by the Supreme Court of the United States held to be null and void, because in violation of public policy; and the said contract of lease being thus null and void, and for that reason, among others, said respondent has been under no duty to make any such payment. Furthermore, the respondent says that all the property received by it from the cross-complainant under said contract of lease, and in existence on or about the said first day of January, 1885, has been and was, in the month of June, 1886, tendered to it and offered to be restored to it by this respondent as of the date of the twenty-seventh day of January, 1885, and ought to have been taken possession of by said cross-complainant at that time, but it refused to do so or to accept the same, and that from that date it should be deemed to have been in the control and possession of said property; and this respondent has never since placed any obstacles in the way of its taking such actual possession, nor ever refused to deliver the same; and since the refusal of said cross-complainant as aforesaid it has asked this court to take possession of said property by a receiver, but said cross-complainant has made objections thereto and this court has refused to do so. Respondent, therefore, denies all responsibility for said property, or for any loss or depreciation thereof which may have occurred, which this respondent does not admit.

6. Respondent says that it is true that in the month of June, 1886, it gave notice of an election, for certain assigned reasons, to cancel and determine the said agreement of lease, and that thereupon it made to the Central Transportation Company the tender or delivery

set forth in Exhibit F, attached to the original bill and in the foregoing last paragraph referred to. This respondent denies
1043 that the reasons assigned for cancellation of said agreement were false, as alleged in said cross-bill, but says that they were true to the knowledge of said cross-complainant; and respondent avers that said tender was made in good faith, that it was refused as aforesaid by said cross-complainant, and that since said refusal by said cross-complainant, and before the filing of this cross-bill herein, this respondent, the complainant in the original bill in which this tender was set forth, abandoned its said bill of complaint and moved this court for leave to dismiss the same, but such leave, upon the objection of the cross-complainant, was refused.

7. Respondent says that it is advised that the several reasons assigned by said cross-complainant in paragraph 7 of said cross-bill for considering said tender to have been insufficient are immaterial in this cause and require no further answer from this respondent, because said tender was in fact refused, and also because before the time of filing this cross-bill the said complainant had abandoned and moved to dismiss its original bill, as before stated.

8. This respondent says it is true, as averred in said cross-bill, that since the filing of the original bill and the answer thereto in this cause the Supreme Court of the United States, affirming the judgment of this circuit court, has, as averred in said cross-bill, held that said "agreement of lease is invalid, by reason of the same having been *ultra vires*, and for other reasons," and this respondent says that said "other reasons" assigned by the said Supreme Court were that the said contract of lease was in violation of public policy as being in restraint of trade, and also as being an agreement for the abandonment of the public duties of the said transportation company, and the character and construction of said contract of lease was declared by the said Supreme Court in its statement that "there can be no doubt that the chief consideration for the sums to be paid by the defendant was the plaintiff's covenant not to engage in the business of manufacturing, using, or hiring sleeping cars, and that the real purpose of the transaction was, under the guise of a lease of personal property, to transfer to the defendant nearly the
1044 whole corporate franchise of the plaintiff, and to continue the plaintiff's existence for the single purpose of receiving compensation for not performing its duties. The necessary conclusion from these premises is that the contract sued on is unlawful and void, because it was beyond the powers conferred on the plaintiff by the legislature, and because it involved an abandonment by the plaintiff of its duties to the public."

Respondent says that it is true, as stated in said cross-bill, that "the said agreement under such interpretation is therefore null and void," and that being null and void between the parties hereto because of such character of the agreement it cannot be made the lawful foundation of any action or application for any relief whatever between the parties thereto. And this respondent submits that the rule which precludes the granting by any court, either of equity or law of affirmative relief upon a contract void for contravention

of public policy, forbade this circuit court to allow such affirmative relief upon this cross-bill, which asserts no claim of right not founded directly upon the express undertakings of this contract of lease held void by this court itself and by the Supreme Court for the reasons aforesaid. The order of this court refusing the motion of this respondent to dismiss its original bill, filed before this court had decreed said lease to be void and the order granting leave to file this cross-bill, gave the aid of this court to one party and against the other to a contract which this court itself had held obnoxious to public policy and utterly void between the parties thereto.

9. Respondent, therefore (the contract of lease being of the character aforesaid and being null and void between the parties hereto, for the reasons aforesaid), whatever it may have been and may now be willing to do elsewhere than in this forum and in this cause, denies that it owes any duty to the cross-complainant which is enforceable in a suit at law or in equity to return to the said transportation company the property assigned under and by virtue of said agreement of lease, or to deliver any equivalent therefor, or to account for any profits derived under and by reason of any
1045 property delivered to it under this agreement, and denies that it owes any such duty under said agreement, or otherwise, to account to the said cross-complainant for any profits derived from the use of said property.

10. Respondent denies the averments of said cross-bill that respondent now holds all contracts for transportation made by it with railroad companies with whom there were transportation contracts with said cross-complainant at the time of said contract of lease of the 17th of February, 1870, in trust for said cross-complainant, with any duty to account for profits derived thereunder, and denies that it holds the same upon any trust whatever for said cross-complainant.

11. This respondent further answering says, that the alleged title of the Central Transportation Company as presented by said cross-bill to the property therein mentioned is a strictly legal title, and is the proper subject-matter of an action at law, if any action for the recovery thereof or for compensation therefor in damages exists, and that the claim to profits or earnings of said property, as asserted by said cross-bill on behalf of said Central Transportation Company, if it exists, is an incident merely to said legal title, and may be equally the subject-matter of recovery in an action at law; and this respondent avers and insists that if any such right as is asserted in said cross-bill exists in said cross-complainant, full, adequate, and complete remedy therefor exists at law, and that under the Constitution of the United States and the acts of Congress this court of equity has no jurisdiction thereof, and respondent prays to be allowed the same benefit of this objection as if the same had been taken by plea.

12. This respondent, in addition to the foregoing answer, avers that the statutes of the State of Pennsylvania provide the following:

"All actions of trespass *quare clausum fregit*, all actions of detinue,

trover, and replevin for taking away goods and cattle, all actions upon account, and upon the case, other than such accounts,
1046 as concern the trade of merchandise between merchant and merchant, their factors or servants, all actions of debt, grounded upon any lending or contract, without specialty, all actions of debt for arrearages of rent, except the proprietaries' quitrent, and all actions of trespass, of assault, menace, battery, wounding, and imprisonment, or any of them, which shall be sued or brought at any time after the twenty-fifth day of April, which shall be in the year of our Lord 1713, shall be commenced and sued within the time and limitation hereafter expressed, and not after; that is to say, the said actions upon the case, other than for slander, and the said actions for account, and the said actions for trespass, debts, detinue, and replevin for goods or cattle, and the said action of trespass *quare clausum fregit*, within six years next after the cause of such actions on suit, and not after."

And respondent further avers that the cause of the action, if any there be, arising to the cross-complainant on account or by reason of the several allegations and complaints in the said cross-bill contained, did not accrue within six years before the said cross-bill was filed, and this allegation respondent makes in bar of the said cross-bill and of each and every item claimed thereby, and prays that it may have the same benefit therefrom as if it had formerly pleaded the same.

And now, having fully answered said cross-bill this respondent prays to be hence dismissed with its costs in this behalf sustained.

THE PULLMAN PARLOR CAR COMPANY,
By GEORGE M. PULLMAN, *President.*

EDWARD S. ISHAM,
WAYNE MacVEAGH,
Of Counsel for Respondent.

STATE OF NEW YORK, }
City of New York, } *To wit:*

On this twenty-third day of September, in the year 1892, before the subscriber, a notary public of the State of New York, in and for the city of New York aforesaid, personally appeared George
1047 M. Pullman, who, being by me duly sworn, made oath in due form of law for and on behalf of the respondent, that he is the president of the respondent, and that he has read the foregoing answer and knows the contents thereof, and the matters and things in said answer as far as the same are stated of his own knowledge knows the same to be true, and as to the matters stated therein upon information and belief he believes the same to be true.

(Executed.)

EXHIBIT A.

First. Contracts of the Central Transportation Company, December 31, 1869.

T. T. Woodruff, G. R. Dykeman, both of Alton, Illinois; John S. Miller, of Litchfield, Illinois; and O. W. Childs, of Syracuse, New York, trading under the firm of T. T. Woodruff & Co., owners of Woodruff's patent for seats and couches for railroad cars, for themselves, their associates and assigns, by their duly authorized agent, T. T. Woodruff, do hereby propose to the Pennsylvania Railroad Company, to put and run upon their road between Philadelphia and Pittsburgh, or such other points as said Pennsylvania Railroad Company may desire, sleeping cars with said patent seats and couches, upon the following terms and conditions, to wit:

First. No charge to be made to the Pennsylvania Railroad Company for the use of cars, but said company to keep them in proper running order and good condition, including renewal of wheels and axles and to repair all damages they may sustain (ordinary wear and tear excepted) except that Woodruff & Co., shall keep the upholstery and inside of the cars in first-class condition and repair at their own expense. The Pennsylvania Railroad Company to furnish fuel and lights. Cars to be subject to the approval of the general car-inspector of the Pennsylvania Railroad Company as to safety and equipments.

Second. Woodruff & Co. to be entitled to charge and receive from such passengers as shall choose to occupy the couches, a reasonable compensation for the same not exceeding fifty cents (50 cts.)
1048 for each person or couch occupied, which charge shall entitle the party to the seat during the trip. Further, the charge shall not be greater than the usual price charged upon other roads for similar accommodations, and especially not greater than on competing lines.

Third. The Pennsylvania Railroad Company to have the right to seat any of the regular first-class passengers in any of the seats of the sleeping cars not required to be used as couches; but it is only intended by this provision, to secure the carrying in the sleeping cars an equal number of passengers to the average number carried in the other first-class passenger cars of the train. Regulations shall hereafter be agreed upon as will give such discretion in the admission of passengers to the sleeping cars as will favor the renting of the couches, and such regulations as may be necessary to preserve the reputation of sleeping cars by excluding improper persons from using them.

Fourth. The Pennsylvania Railroad Company to carry, free, two attendants or persons in charge of each sleeping car on the part of Woodruff & Company for the purpose of renting the couches and keeping the car in order, and also to carry free the person having the general oversight of said business when necessarily passing over said road on business relating to the running of sleeping cars

thereon, all of which shall be considered as employés of the Pennsylvania Railroad Company while traveling on the road, and the said company shall not be held responsible for personal injuries that may occur.

Fifth. Messrs. Woodruff & Co., shall put on the road not less than one car for each night train by the first day of January next. and as much earlier as practicable; they shall put on additional cars as the business of the road shall, in the opinion of the general superintendent, require.

Sixth. Woodruff & Co., shall employ on said sleeping cars no person but such as shall conduct themselves with decorum and propriety, and none but such as shall be approved by the general superintendent of the company and will be subject to removal at his option.

Seventh. All the improvements which the patentee of said seats and couches has made, or shall hereafter make, and all
1049 useful inventions and improvements which shall be made in sleeping cars, shall be promptly introduced by Woodruff & Co., upon the sleeping cars of this road, so far as the same shall conduce to the safety or comfort of passengers or tend to increase the passenger traffic of the road, and their compliance with this provision shall give them the exclusive right of running sleeping cars on said road during the continuance of said patent, unless this contract should be terminated by notice herein provided. But if the Pennsylvania Railroad Company shall at any time deem it their interest, from the want of sufficient patronage, or from any other cause, to discontinue the running of sleeping cars, they may, by giving three months' previous notice, require such discontinuance. But such notice shall not be given until one year after the cars shall commence running. Woodruff & Co., may, on a like notice, cease running said cars.

Eighth. The regulations as to the persons to be admitted into the sleeping cars, and as to the occupation of seats when not required for sleeping, and all other proper rules and regulations for the government of said sleeping cars, shall be subject to the approval of the general superintendent of the said road, and it is expressly understood that all rules and regulations of said Pennsylvania Railroad Company shall be strictly observed and complied with on the part of said Woodruff & Co., and all persons in their service.

In witness whereof, we, the undersigned, have hereunto affixed our signatures for and on behalf of our respective companies, this fifteenth day of September, A. D. 1858, subject to the approval of the president of the Pennsylvania Railroad Company, and this contract shall not be binding until approved by his signature.

(Signed) THOMAS A. SCOTT,
Gen'l Sup't Penna. R. R. Co.

(Signed) T. T. WOODRUFF & CO.,
By T. T. WOODRUFF.

Approved.

(Signed) J. EDGAR THOMPSON,
President Pennsylvania R. R. Co.

1050 Memorandum of an agreement made this thirtieth day of June, A. D., 1862, by and between T. T. Woodruff & Co., of Philadelphia, State of Pennsylvania, by their duly authorized attorney, T. T. Woodruff, and the Northern Central Railway Company by A. B. Warford, president, and J. N. Du Barry, superintendent of the said railway company, witnesseth:

That the said T. T. Woodruff & Co., for themselves, their heirs, executors, administrators, and assigns, for and in consideration of the benefit hereinafter reserved, do hereby agree to furnish to the said railway company, two sleeping cars, known as Woodruff's patent convertible seat and couch cars, said cars to be constructed of the best material, and in the most thorough and workmanlike manner, and equipped with all the latest improvements, and in every respect ready for use. The said cars to be delivered to the said railway company on or before the first day of October next. The said railway company agree to run the aforesaid sleeping cars in the night trains and in such manner as will best accommodate the passengers desiring couches in sleeping cars, and to furnish fuel for the stoves and oil for the lights for said cars, and to keep the said cars in running order and repair, including renewals of worn-out parts, all of which are to be at the expense of said railway company, except such as are hereinafter provided for. The said T. T. Woodruff & Co., are to keep the seats and couches and the upholstery and bedding clean and in perfect order and repair at their own expense, so far as usual wear and tear are concerned, and not otherwise. The said railway company are to take all risks of casualties incident to passengers and cars. The said T. T. Woodruff & Co. are to furnish at their own expense two employés upon each of the said cars, one to act as porter and the other to preserve order and collect couch fares, as is hereinafter provided for, both of whom shall be entitled to ride free when on duty, such employés to be treated as the employés of the said railway company and to be subject to the rules and regulations thereof. No charge to be made against the said railway company for the use of said cars, but the said cars are to be treated in all respects as the cars of the said railway com-
1051 pany during the continuance of this contract. But nothing in this agreement shall be construed as affecting the title of the said T. T. Woodruff & Co. to the said cars after the expiration of this contract.

The said T. T. Woodruff & Co. are to have the entire control of the admission of passengers into the said sleeping cars except at such times when the admission of passengers may become necessary from an accident to one or more cars of the same train, or when such admission will not interfere or molest such passengers as may desire couches. The said T. T. Woodruff & Co. are to be entitled to collect fifty cents from each and every passenger who may, from choice, occupy a seat in said sleeping cars, or fifty cents for each couch occupied, which sum shall entitle such passenger to occupy such seat during such trips. Such rules and regulations shall be agreed upon as will favor the renting of the couches of the said cars.

The said T. T. Woodruff & Co. are to furnish additional cars upon

the same terms as herein provided for, for the first two cars, whenever it shall be found that the said two cars are not sufficient to well and fully accommodate the passengers requiring couches in sleeping cars; they are also to promptly introduce any improvement which may be made in sleeping cars, so far as such improvements shall conduce to the safety and comfort of passengers, or tend to increase the travel of the said road.

The compliance with the provisions of this contract on the part of said T. T. Woodruff & Co. shall give them an exclusive right to furnish sleeping cars to the said railway company during the continuance of said Woodruff's patent.

It is further agreed, that this contract or agreement may be terminated and made void for want of sufficient patronage or the non-compliance by either party with the provisions of this contract, by six months' written notice being given to the opposite party by the party desiring to annul the agreement. But nothing in this contract shall be so construed as to give the said railway company the right to terminate and make void this contract for the substitution of other sleeping cars under any contract other than those
1052 constructed under the patent granted to T. T. Woodruff, at any time during the continuance of the said Woodruff's patent, without prejudice to the right of the said T. T. Woodruff & Co. to recover such damages as they may sustain or may have sustained.

The person having the general oversight of the said sleeping cars shall be entitled to ride free when on business appertaining to the said sleeping cars.

It is expressly understood and agreed, that no charge is to be made against the said railway company by the said T. T. Woodruff & Co. for the past use of sleeping cars, nor is any charge to be made against the said T. T. Woodruff & Co. by the said railway company for tolls or any other expenses by reason of sleeping cars under the patents of T. T. Woodruff having been run on their railway previous to the date of this agreement.

It is further agreed, that no charge shall be made by either party to this agreement against the other, from the date of this agreement until the two cars are placed upon the railway, as is hereinbefore provided for.

In testimony whereof, we have hereunto set our hands and seals the day and year above written.

(Signed) J. D. CAMERON, [L. S.]
Vice-Pres't N. C. R. W. Co.

(Signed) J. N. DU BARRY, [L. S.]
Superintendent.

(Signed) T. T. WOODRUFF & CO., [L. S.]
By T. T. WOODRUFF, *Attorney.*

Witnesses present at signing:
The words seats and couches:
(Signed) EDMUND L. DU BARRY.

This contract, between Edward C. Knight, William C. Stevenson, and William A. Brown, of Philadelphia, trading under the firm of E. C. Knight, and owners of Knight's patent for couches for railroad cars, for themselves, their associates and assigns, by
1053 their duly authorized agent, William C. Stevenson, do hereby propose to the Baltimore and Ohio Railroad Company to put and run on their road between Washington city, D. C., Baltimore, and Wheeling, and such other points on their road as the said railroad company may desire, sleeping cars, upon the following terms and conditions, viz:

First. No charge to be made to the Baltimore and Ohio Railroad Company for the use of the cars, but said company to keep them in proper running order and condition, including renewal of wheels and axles, and to repair all damages they may receive, (ordinary wear and tear excepted,) except that the said E. C. Knight shall keep the upholstery and inside of the cars in first-class condition and repair at his own expense. The Baltimore and Ohio Railroad Company to furnish lights and fuel, and give notice of the running of the cars in all their regular advertisements. Said cars to be subject to the approval of the master of machinery of the said railroad company, as to safety and equipment.

Second. The said E. C. Knight shall be entitled to charge and receive from such passengers as shall choose to occupy the couches, a reasonable compensation for the same, not exceeding fifty (50) cents for a single couch, and one (1) dollar for a double couch, which charge shall entitle the party to a seat during the trip, and which amount he shall collect through his agents; the said railroad company in nowise to be responsible for the same. The above rates of charges shall only be increased or diminished in keeping with the charges on competing roads furnishing equal accommodations and comfort.

Third. The said railroad company shall carry free, two attendants in charge of each sleeping car, on the part of E. C. Knight, for the purpose of renting the couches and keeping the cars in order, who shall strictly conform to all the rules of said railroad company, and conduct themselves with propriety and decorum, in default of which they shall be subject to removal by the master of transportation. They shall also carry free of charge, the persons having the oversight of said business, or necessarily passing over
1054 said road on business relating to the running of sleeping cars thereon, all of whom shall be considered as employés of the said Baltimore and Ohio Railroad Company while traveling on said road, and said company shall not be held responsible for personal injuries they may receive. The said agents shall not travel free except they be furnished with a pass by said railroad company.

Fourth. The said E. C. Knight shall put on the road not less than one car for each night train within one month after said railroad company shall commence running their through trains from Washington city to Wheeling. He shall put on additional cars as the business of the road shall, in the opinion of the master of transpor-

tation, require. He shall be allowed to use such discretion in the admission of passengers to the sleeping cars as will favor the renting of the couches, and put in force such regulations as may be necessary to preserve the reputation of sleeping cars, by excluding improper persons from using them; all of which shall only be made with the approval of the master of transportation of said railroad company.

Fifth. All the improvements which the patentee of said seats and couches has made, or shall hereafter make in the same, so far as they shall conduce to the comfort and safety of the passengers, or tend to increase the passenger traffic of the road, shall be promptly introduced by the said E. C. Knight in the sleeping cars on this road, and his compliance with this provision shall give him the exclusive right of running sleeping cars on the said Baltimore and Ohio railroad during the continuance of said patent, all the improvements which the said E. C. Knight shall introduce in his cars on any other road shall be promptly introduced on this road, if required.

Sixth. The said E. C. Knight, in consideration of the foregoing, hereby guarantees to defend the said Baltimore and Ohio Railroad Company against all suits for infringements, or alleged infringements, by reason of the running of the said sleeping cars, and to pay all damages arising therefrom during the continuance of said patent or contract.

In witness whereof, we, the undersigned, have hereunto affixed our signatures—E. C. Knight for himself, and the Baltimore
1055 and Ohio Railroad Company by their president, this twenty-second day of December, A. D. 1862.

(Signed) E. C. KNIGHT.

Witnesses to signature of E. C. Knight:
(Signed) CHAS. H. HARDING.
" LAMBERT R. WALKER.

(Signed) J. W. GARRETT, *President.*

Witnesses to signature of J. W. Garrett, pres't:
(Signed) L. M. COLE, *G. T. A.*

It is further agreed, that the said railroad company shall have the privilege of using any unoccupied seats in the sleeping cars with first-class passengers, when there shall not be sufficient room in the other first-class cars on the train, and that should the cars about to be introduced prove too heavy for the grades, then the said E. C. Knight will at once commence the building of other sleeping cars, better suited to the use of said road, the patented couches in which shall not increase the weight of said cars more than ten hundred pounds over that of an ordinary first-class passenger car of same capacity and dimensions, and should it become necessary to change the trucks now under the cars for those of the Baltimore and Ohio railroad, the said E. C. Knight agrees to pay a liberal compensation for the same.

In witness whereof, we, the undersigned, have hereunto affixed our signatures, E. C. Knight, for himself, the Baltimore and Ohio Railroad Company by their president, this fifth day of January, A. D. 1863.

(Signed) E. C. KNIGHT.
J. W. GARRETT, *President.*

Witnesses to signature of E. C. Knight and J. W. Garrett, president:

(Signed) L. M. COLE, *G. T. A.*

1056 For a valuable consideration to us paid by the Central Transportation Company, (a company incorporated under the act of assembly of Pennsylvania, of April 7th, 1849, and having its principal office at Philadelphia,) the receipt whereof is hereby acknowledged, we, Edward C. Knight, William C. Stevenson and William A. Brown, parties named in the foregoing contract do hereby assign, sell and transfer unto the said The Central Transportation Company, the foregoing and all our rights and privileges thereunder and all benefits to be derived therefrom, with all our right, title and interest therein, together, also, with four sleeping railroad cars, with their furniture and fixtures, furnished to the above-named The Baltimore and Ohio Railroad Company under said contract, now on said road and belonging to us and together with all earnings under said contract since June 1st, 1863.

Witness our hands and seals this first day of July, A. D. 1863.

(Signed) E. C. KNIGHT. [L. S.]
(Signed) WM. C. STEVENSON. [L. S.]
(Signed) WM. A. BROWN. [L. S.]

Sealed and delivered in presence of us:

(Signed) C. M. HUSBANDS.
J. KNIGHT.

Memorandum of agreement.—It is hereby agreed between the parties hereto that the Central Transportation Company "shall have the right to furnish and run all the sleeping cars between the cities of New York, Philadelphia, Baltimore and Washington on the entire line or any part thereof, for and during the term of ten years, from the date hereof, on the following terms and conditions," to wit:

First. The Central Transportation Company to furnish first-class sleeping cars sufficient to accommodate the wants of the travelling public, with all the modern conveniences, at their own cost and expense, and maintain all the upholstery, bedding and fixtures pertaining thereto for the sleeping accommodation of the travelling public.

1057 Second. The Central Transportation Company shall furnish a competent conductor and porter for each sleeping car that may be placed on the route, on any part of it, and who shall, while on duty, be carried free on the roads.

Third. In consideration of all the foregoing the other parties

hereto agree that they will receive upon the lines and move promptly and regularly upon all of their night trains the cars so furnished, and to the extent and number that may be necessary to meet the wants of the public, and to provide all repair and renewals (except those pertaining to the upholstery and berths) that may be necessary to keep them in first-class condition. They (the railway companies) to take all risks of casualties, and furnish for said cars fuel and other supplies as they would do were other cars in lieu thereof owned and run by them respectively for the accommodation of first-class passenger traffic. It being fully understood that the several railway companies shall not be responsible to the Central Transportation Company for any compensation for injury to their employés, or to said employés for any injury to them in any form, or for the use of said cars, or for the capital invested therein, or in any other way except for the repairs, renewals and supplies as hereinbefore provided for.

Fourth. In consideration of all the foregoing, it is mutually agreed between the parties that the prices to be charged for the use of berths between the several points shall be fixed by the railway companies, not lower than the sum of one dollar ($1.00) for each single berth, and out of the sum so fixed the railway companies shall pay over to the Central Transportation Company fifty cents (50 cts.) for the use of each single berth sold or occupied, which shall be deemed and considered a full compensation to them, the said Central Transportation Company, for furnishing cars, bedding and other sleeping equipments, and all other expenses of operating said cars (including patent fees,) as provided in this contract, the balance of all receipts derived as above from the sale of the use or occupation of berths, shall be retained by the said railway companies.

Fifth. If hereafter, in the estimation of the parties hereto,
1058 the price of one dollar ($1.00) between New York and Philadelphia or between Philadelphia and Baltimore, is too high for a revenue basis, or the price between New York and Washington, is too low, then and in such case the price may be reduced or raised, and the same shall be equally divided between the railway companies and the said Central Transportation Company: settlement to be made at Philadelphia on or before the fifth of each month for the preceding month, at the office of the Philadelphia, Wilmington and Baltimore Railroad Company.

Sixth. The Knight's sleeping car now owned by the Philadelphia, Wilmington and Baltimore Railroad Company, shall be paid for by the Central Transportation Company, to Philadelphia, Wilmington and Baltimore Railroad Company, at a fair valuation, with the unexpired patent fee on the same.

Seventh. This contract shall commence whenever the Central Transportation Company shall put on two of their first-class new sleeping cars in addition to the two "Knight's sleeping cars" now on the line between Philadelphia and Washington, before referred to. Hospital cars for sick and wounded soldiers may be used by the railroad companies as now, without charge to soldiers. It is further understood and agreed between the parties to this agreement, that the

railroad companies reserve the right to use as many reclining seats in cars as they think proper, either through or local. That the railroad companies have the power to say how many sleeping cars on a train shall be run, and on what trains they shall be placed.

Double berths to command double price. Sleeping cars to be subject to inspection of masters of machinery of the different roads.

Employés of Central Transportation Company to conform to rules and regulations of the different roads, and to be under the direction and control of the officers of the "through line." Central Transportation Company to exclude all improper persons from the sleeping cars. Central Transportation Company to defend the different roads who are parties to this agreement, against suits for in-
1059 fringement of patent, and to hold them harmless from the same, either in the past or future. The Central Transportation Company to allow first-class passengers to ride in cars during daytime when required by the different companies.

Each company to be uncontrolled in its local business or rates by the other companies.

Disagreements (in everything but prices of berths) to be submitted to two disinterested and experienced railroad men; one chosen by each party, and they to choose a third, whose decision in matters referred to them, shall be final.

Philadelphia, April 12th, 1864.

For the CENTRAL TRANSPORTATION COMPANY,

(Signed) O. W. CHILDS, *President.* [L. S.]

Witness:

(Signed) THOS. K. WALKER.

For the BALTIMORE & OHIO RAILROAD CO.,

(Signed) J. W. GARRETT, *President.* [L. S.]

Witness:

(Signed) AND'W ANDERSON.

For the PHILA., WILMINGTON & BALTIMORE RAILROAD COMPANY,

(Signed) By S. M. FELTON, *President.* [L. S.]

Witness:

(Signed) GEO. E. BENT, S. M. F.

Articles of agreement, made and entered into this first day of May, 1862, by and between the Pittsburgh, Fort Wayne and Chicago Railway Company of the one part, and T. T. Woodruff, G. R. Dykeman and O. W. Childs, partners, doing business under the name and style of T. T. Woodruff & Co. of the other part.—It is hereby agreed by and between the parties that the said T. T. Woodruff & Co. shall put and run upon the road of the said railway com-
1060 pany, sleeping cars, with Woodruff's patent seats and couches, upon the following terms and conditions:

First. No charge shall be made to, nor compensation paid by, said

railway company for the use of the cars over the entire road between Pittsburgh and Chicago.

Second. The said railway company shall keep the cars in proper running order and condition, furnish the necessary fuel to be used in the same, provide oil for the lights, and repair all damages done to said cars, except such as may result from their defective construction and the use of improper materials.

Third. T. T. Woodruff & Co. agree to keep the inside of said cars and the upholstery thereof in order and good repair.

Fourth. T. T. Woodruff & Co. shall be entitled to receive from such passengers as may choose to occupy the couches the same compensation as is and may be paid on other through railroads between the East and West, and on lines in any way competing with the said Pittsburgh, Fort Wayne and Chicago Railway Company, the said compensation, however, not to exceed the sum of fifty cents for a night's lodging or for a single trip.

Fifth. The conductor of the railway company party hereto at his own discretion, shall have the right to seat any of the regular passengers in any of the seats of the sleeping cars not required to be used as couches.

Sixth. Regulations hereafter — be adopted by the parties hereto, as shall give such discretion in the admission of passengers to the sleeping cars as will favor the renting of the couches and such regulations as may be required to preserve good order therein.

Seventh. The said railway company shall carry free of charge, two persons in each sleeping car on the part of Woodruff & Co. for the purpose of renting the couches and collecting the fare for the use thereof, who are also to be taken and considered as the employés of said railway company, who shall sign a contract to that effect before commencing to run upon said cars, and be subjected at all times to the orders of the conductor of the train and the
1061 general rules and regulations of the company and one of whom shall act as brakesman on the train. The said railway company shall also carry over their road free of charge, the persons selected by Woodruff & Co., to have the general supervision of all the business relating to said sleeping cars.

Eighth. Messrs. Woodruff & Co. agree to place upon the road of said company as many sleeping cars as the business of the company may demand and the company require.

Ninth. Messrs. Woodruff & Co. agree to employ on said sleeping cars, sober and trustworthy persons and none except such as said railway company may approve, the said railway company hereby reserving the right at all times, to exclude any person so employed from the cars for any misbehavior or neglect of duty.

Tenth. All improvements which the patentee of said seats and couches has made, or shall hereafter make, and all useful inventions and improvements which shall be made in sleeping cars, shall be introduced by Woodruff & Co. upon the sleeping cars on said railway whenever desired by the president of said company, so far as the same shall conduce to the safety and comfort of the passengers, or tend to increase the travel upon said road; and their

compliance with this provision of the contract shall give them the exclusive right to run sleeping cars on said roads during the existence of said Woodruff's patent, provided, however, that said company shall have the right to place upon their own cars such improved seats not to be used as couches, as they may think proper. But if the said railway company shall at any time consider it their interest, from the want of sufficient patronage or from any other cause to discontinue the running of said sleeping cars, they may, in three months' notice to Woodruff & Co. require them to remove the same from the road, and this contract shall be null and void. And said notice shall not be given in less than one year after the cars shall commence running, and said Woodruff & Co. may also upon a like notice of three months after the one year as aforesaid, cease to run the same and determine this contract.

Eleventh. The regulations as to the persons to be admitted
1062 into the sleeping cars and as to the occupation of seats when not required for sleeping and all other proper rules and regulations for the government of said cars, not hereinbefore provided for, shall be as indicated by the general superintendent of said road. And it is expressly agreed, that all such rules and regulations shall be strictly obeyed by all persons employed in and about said sleeping cars.

Twelfth. It is further agreed, that the running gear of said sleeping cars shall be made to conform in every particular to that in use and deemed proper on the road of said company, and before put into service shall be subject to the approval of the general superintendent, that the axles of said cars shall be of the best Ames manufacture and made of Salisbury iron.

Thirteenth. And it is also further agreed, that said Woodruff & Co. may sell, assign and set over to any party or parties, all or any portion of their interest in this contract, with this provision however: that the assent of said railway company shall be first had and obtained for the same in writing.

Fourteenth. The agents of said railway company, when traveling on the business of said company, shall not be charged for accommodations in said sleeping cars.

In witness whereof, the said Pittsburgh, Fort Wayne and Chicago Railway Company, by their general superintendent, have hereunto affixed their c. rporate seal, and the said parties composing the firm of T. T. Woodruff & Co. have also hereunto set their hands and seals this ninth day of September, 1862.

THE PITTSBURGH, FORT WAYNE & CHICAGO RAILWAY COMPANY,

(Signed) By JOHN B. JERVIS, *Gen'l Sup't.* [L. S.]

(Signed) T. T. WOODRUFF & CO.,

By T. T. WOODRUFF, *Attorney.* [L. S.]

S. COWLEY.

The assent of the Pittsburgh, Fort Wayne and Chicago Railway Company, party of the first part, to the foregoing agreement,
1063 is hereby given to the transfer of this contract by the party

of the second part to the Central Transportation Company, by authority of the board of directors, as per resolution of the board of directors, of 15th December, 1862.

(Signed) G. W. CASS, *President.*

Attest: W. H. BARNES, *Secretary.*

December 31st, 1862.

Articles of an agreement, made this 26th day of September, A. D. 1864, by and between the Central Transportation Company, (an incorporation under the general act of the State of Pennsylvania,) party of the first part, and the Cincinnati, Hamilton & Dayton, and Dayton & Michigan Railroad Companies, the party of the second part, witnesseth as follows:

Article 1st. For and in consideration of the covenants hereinafter mentioned, the said Central Transportation Company agree to furnish to the aforesaid railroad companies, two sleeping cars, with seats and couches constructed on the patented plans now owned by the party of the first part, and known as Woodruff, Knight, Myer, and other consolidated patents for convertible seats and couches in sleeping cars: the said cars to be constructed of the best material and in the most substantial and workmanlike manner. The bodies and trucks to be of such strength and constructed on such plan as may be required by the aforesaid party of the second part, and be fully equipped with all their latest improvements, and delivered to said party of the second part, in all respects ready for use, on or before the 1st day of October next.

Article 2d. The said party of the first part are to keep the upholstery and bedding clean and in good order at their own expense so far as usual wear and tear are concerned, and not otherwise, and to supply new bedding and upholstery when required, of the best quality used in sleeping cars, and the said party of the second part are to take all risk of casualties, both as to passengers and cars.

1064 Article 3d. The said party of the first part is, at its own expense, to furnish two employés upon each of the said cars, one to act as porter, the other to preserve order and collect couch fares as is hereinafter provided, both of whom shall be entitled to ride free while on duty. The said employés to be treated as the employés, and be subject to the rules and regulations of the aforesaid party of the second part.

Article 4th. The said party of the second part in consideration of the use of the aforesaid sleeping cars, are to haul the same on their railroad in all the night trains, and in such manner as will best accommodate passengers on said railroad requiring the use of sleeping cars. And the said party of the second part shall, at its own expense, furnish fuel for the stoves and material for the lights, and keep said cars in good running order and repair, including renewals of worn-out parts, except such as are provided for in article 2d of this agreement. The said cars to be treated, so long as this agreement shall continue, in all respects as the cars of the party of the second part, but nothing contained in this agreement shall be

so construed as affecting the title of the said party of the first part to the said cars after the termination of this contract.

Article 5th. The aforesaid party of the first part is to have the entire control of the admission of passengers into said sleeping cars, and shall be entitled to collect fifty cents for each and every couch occupied, or such other sums for the use of couches as may be usual on other lines furnishing like accommodations. Such rules and regulations shall be agreed upon as will most favor the renting of couches in said cars. The presidents, vice-presidents, and superintendents of both parties to occupy couches free of charge.

Article 6th. The said party of the first part shall furnish upon the same terms and conditions, additional cars, whenever the aforesaid cars are not sufficient to fully accommodate the passengers desiring couches, and the compliance of said party of the first part with the provisions of this article shall give them exclusive right to the use of sleeping cars upon the railroad of the party of the second part during the continuance of the incorporation of the party of the first part, not exceeding 20 years.

1065 Article 7th. It is expressly understood and agreed, by the parties to this agreement, that this contract may, at the option of either party, be terminated for want of sufficient patronage for the use of sleeping cars, upon six months' written notice being served upon the other party to that effect. But nothing in these articles of agreement shall be so construed as to give to the said party of the second part the right to terminate and make void this contract for the substitution of other sleeping cars at any time during the continuance of the incorporation of the party of the first part, without prejudice to the rights of the aforesaid party of the first part to recover such damages as it may thereby sustain or may have sustained.

Article 8th. The said party of the second part shall have the right to run sleeping cars on its road, at its own cost, in case the party of the first part give notice of their wish to discontinue running the same for want of patronage.

Article 9th. This agreement is not to be understood as preventing the party of the second part from hauling sleeping cars of the Dayton and Hamilton and Cincinnati and Chicago Air Line cars, as well as those of the Atlantic and Great Western Co.

In witness whereof, the aforesaid parties of the first and second parts, have hereunto set their hands and seals the day and year first above written.

THE CIN., HAM. & DAY. RAILROAD CO.,

(Signed) By S. S. L'HOMMEDIEU, *President.* [L. S.]

THE DAYTON & MICHIGAN RAILROAD CO.,

(Signed) By S. S. L'HOMMEDIEU, *President.* [L. S.]

THE CENTRAL TRANSPORTATION COMPANY,

(Signed) By O. W. CHILDS, *President.* [L. S.]

1066 Memorandum of an agreement, made this twenty-eighth day of May, 1862, by and between T. T. Woodruff & Co. of the city of Philadelphia, State of Pennsylvania, by their duly authorized attorney, T. T. Woodruff; and the Bellefontaine and Indiana and Indianapolis, Pittsburgh and Cleveland Railroad Companies, by their duly authorized agent, John Brough, president Bellefontaine and Indianapolis, and general superintendent Indianapolis, Pittsburgh and Cleveland, of the said railroad companies. Witnesseth:

First. That the said T. T. Woodruff & Co. for themselves, their heirs, executors, administrators, and assigns, for and in consideration of the covenants hereinafter mentioned, do hereby agree to furnish to the said railroad company two sleeping cars, known as T. T. Woodruff's patent convertible seat and couch cars; said cars to be constructed of the best materials and in the most thorough and workmanlike manner and equipped with all the latest improvements and in every respect ready for use. The said cars to be delivered to the said railroad company within four months from this date.

Second. The said T. T. Woodruff & Co. are to keep the upholstery and bedding clean and in perfect order and repair at their own expense so far as usual wear and tear are concerned, and not otherwise. The said railroad company is to take all risks of casualties both as to passengers and cars.

Third. The said T. T. Woodruff & Co. are, at their own expense, to furnish two employés upon each of the said cars, one to serve as a porter and the other to preserve order and collect couch fares, as is hereinafter provided, both of whom shall be entitled to ride free when on duty, the said employés to be treated as the employés of the said railroad company and to be subject to the rules and regulations thereof.

Fourth. The said railroad company, in consideration of the use of the said sleeping cars are to run the same on their railroad from Crestline, Ohio, to Indianapolis, Indiana, or such other points
1067 on said railroad between those places on the night trains and in such manner as will best accommodate passengers upon said railroad requiring sleeping cars, and the said railroad company, at their own expense are to furnish fuel for the stoves, oil for the lights, and to keep the said cars in running order and repair, including renewals of worn-out parts, except such as are provided for in article second of this agreement, the cars to be treated in all respects so long as this agreement shall continue, as the cars of the said company. But nothing contained in this agreement shall be construed as affecting the title of the said T. T. Woodruff & Co. to the said cars after the termination of this contract.

Fifth. The said T. T. Woodruff & Co. are to have the entire control of admission of passengers into said sleeping cars and to be entitled to collect fifty cents for each and every couch occupied. Such rules and regulations shall be agreed upon as will favor the renting of the couches in said cars

Sixth. The said T. T. Woodruff & Co. to furnish upon the same terms additional cars whenever the said two cars are not sufficient

to fully accommodate the passengers desiring couches, and the compliance of the said T. T. Woodruff & Co. with the provisions of this agreement shall give them an exclusive right to the use of sleeping cars upon the said railroad during the continuance of said Woodruff's patents, unless terminated as hereinafter provided for.

Seventh. It is expressly understood and agreed by the parties to this agreement that this contract may be terminated for want of sufficient patronage for the use of sleeping cars, or for any other cause, at the option of either party to this contract upon six months' written notice being served upon the other party to that effect. But nothing in this contract shall be so construed as to give to the said railroad company the right to terminate and make void this contract for the substitution of other sleeping cars at any time during the continuance of said Woodruff's patent, without prejudice to the right of the said T. T. Woodruff & Co. to recover such damages as they may sustain or may have sustained.

1068 In witness whereof we have hereunto set our hands and seals by our duly authorized agents or attorneys (in duplicate) the day and year above written, at Philadelphia.

(Signed) T. T. WOODRUFF & CO.,
By T. T. WOODRUFF, *Attorney.* [L. S.]
(Signed) THE B'NE & INDIANA R. R. CO.,
By JOHN BROUGH, *President.* [L. S.]
(Signed) THE IND., PITTS. & CL'D R. R. CO.,
By JOHN BROUGH, *Superintendent.* [L. S.]

Witnesses present at signing:
(Signed) PAUL A. DAVIS.

Articles of an agreement made this tenth day of September, A. D. 1864, by and between the Central Transportation Company, an incorporation under the general act of the State of Pennsylvania, the party of the first part; and the Marietta and Cincinnati Railroad Company, the party of the second part, witnesseth as follows:

Article 1st. For and in consideration of the covenants hereinafter mentioned, the said Central Transportation Company hereby agrees to furnish to the aforesaid Marietta and Cincinnati Railroad Company, two (2) sleeping cars with seats and couches constructed on the patented plans, now owned by the party of the first part, and known as Woodruff, Knight, Myer and others, consolidated patents for convertible seats and couches in sleeping cars—said cars to be constructed of the best material and in the most substantial and workmanlike manner; the bodies and trucks to be of such strength and constructed on such plan as may be required by the aforesaid party of the second part, and be fully equipped with all their latest improvements and delivered to said party of the second part in all respects ready for use, on or before the first day of February, 1865.

1069 Article 2d. The said party of the first part are to keep the upholstery and bedding clean and in good order at their own expense, so far as usual wear and tear are concerned, and not other-

wise; and the said party of the second part are to take all risk of casualties, both as to passengers and cars.

Article 3d. The said party of the first part, is, at its own expense, to furnish two employés upon each of the said cars, one to act as porter, the other to preserve order and collect couch fares, as is hereinafter provided, both of whom shall be entitled to ride free while on duty; the said employés to be treated as the employés, and be subject to the rules and regulations of the aforesaid party of the second part.

Article 4th. The said party of the second part, in consideration of the use of the aforesaid sleeping cars, are to haul the same on their railroad in all the night trains, and in such manner as will best accommodate passengers on said railroad requiring the use of sleeping cars; and the said party of the second part, shall, at its own expense, furnish fuel for the stoves and material for the lights, and keep the said cars in good running order and repair, including renewals of worn-out parts, except such as are provided for in article 2d of this agreement—the said cars to be treated so long as this agreement shall continue in all respects as the cars of the party of the second part, but nothing contained in this agreement shall be so construed as affecting the title of the said party of the first part to the said cars after the termination of this contract.

Article 5th. The aforesaid party of the first part is to have the entire control of the admission of passengers into said sleeping cars, and shall be entitled to collect fifty cents for each and every couch occupied, or such other sums for the use of couches as may be usual on other lines furnishing like accommodations; such rules and regulations shall be agreed upon as will most favor the renting of couches in said cars.

Article 6th. The said party of the first part, shall furnish, upon the same terms and conditions, additional cars whenever the aforesaid cars are not sufficient to fully accommodate the passengers desiring couches, and the compliance of the said party of the
1070 first part with the provisions of this article shall give them the exclusive right to the use of the sleeping cars upon the railroad of the party of the second part during the continuance of the incorporation of the party of the first part.

Article 7th. It is expressly understood and agreed, by the parties to this agreement, that this contract may, at the option of either party, be terminated for want of sufficient patronage for the use of sleeping cars, upon six months' written notice being served upon the other party to that effect; but nothing in these articles of agreement shall be so construed as to give to the said party of the second part, the right to terminate and make void this contract for the substitution of other sleeping cars at any time during the continuance of the incorporation of the party of the first part, without prejudice to the rights of the aforesaid party of the first part to recover such damages as it may thereby sustain or may have sustained.

In witness whereof the aforesaid parties of the first and second parts have hereunto set their hands and seals the day and year first above written.

It is understood and agreed by the signers of this contract that it is to be void unless approved by the president of the Marietta and Cincinnati Railroad Company, party of the second part.

THE CENTRAL TRANSPORTATION COMPANY,

(Signed) By ORVILLE W. CHILDS, *President.* [L. S.]

THE MARIETTA & CINCINNATI R. R. CO.,

(Signed) By JOHN DURAND, *Sup't.* [L. S.]

Sealed and delivered in presence of—
Witness to Childs & Durand:
B. F. COAN.

Approved, September 16th, 1864.
(Signed) THOS. L. WILSON,
Pres't M. & C. R. R. Co.

Articles of an agreement made this 14th day of September, A. D. 1864, by and between the Central Transportation Company,
1071 an incorporation under the general act of the State of Pennsylvania, the party of the first part, and H. J. Jewett, president and receiver of the Central Ohio Railroad Company, the party of the second part, witnesseth as follows:

Article 1st. For and in consideration of the covenants hereinafter mentioned, the said Central Transportation Company hereby agrees to furnish to the aforesaid H. J. Jewett, president and receiver of the Central Ohio Railroad Company, two sleeping cars, with seats and couches constructed on the patented plans now owned by the party of the first part and known as Woodruff, Knight, Myer and others, consolidated patents for convertible seats and couches in sleeping cars—said cars to be constructed of the best material and in the most substantial and workmanlike manner; the bodies and trucks to be of such strength and constructed on such plan as may be required by the aforesaid party of the second part, and be fully equipped with all of their latest improvements and delivered to the said party of the second part in all respects ready for use, on or before the first day of April, 1864.

Article 2nd. The said party of the first part are to keep the upholstery and bedding clean and in good order at their own expense, so far as usual wear and tear are concerned, and not otherwise; and the said party of the second part are to take all risk of casualties, both as to passengers and cars.

Article 3rd. The said party of the first part, is, at its own expense, to furnish two employés upon each of the said cars, one to act as porter, the other to preserve order and collect couch fares as is hereinafter provided, both of whom shall be entitled to ride free while on duty; the said employés to be treated as the employés, and be subject to the rules and regulations of the aforesaid party of the second part.

Article 4th. The said party of the second part in consideration of the use of the aforesaid sleeping cars are to haul the same on their

railroad in all the night trains, and in such manner as will best accommodate passengers on said railroad requiring the use
1072 of sleeping cars; and the said party of the second part, shall, at its own expense, furnish fuel for the stoves and material for the lights, and keep said cars in good running order and repair, including renewals of worn-out parts, except such as are provided for in article 2d of this agreement; the said cars to be treated, so long as this agreement shall continue in all respects as the cars of the party of the second part; but nothing contained in this agreement shall be so construed as affecting the title of said party of the first part to the said cars after the termination of this contract.

Article 5th. The aforesaid party of the first part is to have the entire control of the admission of passengers into said sleeping cars, and shall be entitled to collect fifty cents for each and every couch occupied, or such other sums for the use of couches as may be usual on other lines furnishing like accommodations; such rules and regulations shall be agreed upon as will most favor the renting of couches in said cars.

Article 6th. The said party of the first part shall furnish, upon the same terms and conditions, additional cars whenever the aforesaid cars are not sufficient to fully accommodate passengers desiring couches; and the compliance of said party of the first part with the provisions of this article shall give them the exclusive right to the use of sleeping cars upon the railroad of the party of the second part during the continuance of the incorporation of the party of the first part.

Article 7th. It is expressly understood and agreed by the parties to this agreement, that this contract may, at the option of either party, be terminated for want of sufficient patronage for the use of sleeping cars upon six months' written notice being served upon the other party to that effect; but nothing in these articles of agreement shall be so construed as to give to said party of the second part, the right to terminate and make void this contract for the substitution of other sleeping cars at any time during the continuance of the incorporation of the party of the first part, without prejudice to the rights of the aforesaid party of the first part to recover such damages as it may thereby sustain or may have sustained.

1073 In witness whereof, the aforesaid parties of the first and second parts have hereunto set their hands and seals the day and year first above written.

(Signed) THE CENTRAL TRANSPORTATION CO.
O. W. CHILDS, *President.* [L. S.]
(Signed) D. W. CALDWELL,
For H. J. JEWETT, [L. S.]
President and Receiver, Subject to His Approval.

Sealed and delivered in presence of—
(Signed) JAMES CALDWELL.

Approved:
H. J. JEWETT,
President and Receiver Central Ohio R. R. Co.

Articles of an agreement made this twenty-sixth day of September, A. D. 1864, by and between the Central Transportation Company, an incorporation under the general act of the State of Pennsylvania, the party of the first part, and the Indianapolis and Cincinnati Railroad Company, the party of the second part, witnesseth as follows:

Article 1st. For and in consideration of the covenants hereinafter mentioned, the said Central Transportation Company hereby agrees to furnish to the aforesaid Indianapolis and Cincinnati Railroad Company two (2) sleeping cars, with seats and couches constructed on the patented plans now owned by the party of the first part, and known as Woodruff, Knight, Myer and others, consolidated patents for convertible seats and couches in sleeping cars—said cars to be constructed of the best material, and in the most substantial and workmanlike manner; the bodies and trucks to be of such strength and constructed on such plan as may be required by the aforesaid party of the second part, and be fully equipped with all of their latest improvements, and delivered to the said party of the second part in all respects ready for use on or before the fifteenth day of November next.

Article 2d. The said party of the first part are to keep the upholstery and bedding clean and in good order at their own
1074 expense, so far as usual wear and tear are concerned, and not otherwise; and the said party of the second part are to take all risk of casualties, both as to passengers and cars.

Article 3d. The said party of the first part is, at its own expense, to furnish two employés upon each of the said cars, one to act as porter, the other to preserve order and collect couch fares, as is hereinafter provided, both of whom shall be entitled to ride free while on duty; the said employés to be treated as the employés, and be subject to the rules and regulations of the aforesaid party of the second part.

Article 4th. The said party of the second part in consideration of the use of the aforesaid sleeping cars, are to haul the same on their railroad in all the night trains, and in such manner as will best accommodate passengers on said railroad requiring the use of sleeping cars; and the said party of the second part, shall, at its own expense, furnish fuel for the stoves and material for the lights, and keep said cars in good running order and repair, including renewals of worn-out parts, except such as are provided for in article 2d of this agreement; the said cars to be treated so long as this agreement shall continue, in all respects as the cars of the party of the second part; but nothing contained in this agreement shall be so construed as affecting the title of said party of the first part to the said cars after the termination of this contract.

Article 5th. The aforesaid party of the first part is to have the entire control of the admission of passengers into said sleeping cars, and shall be entitled to collect fifty cents for each and every couch occupied or such other sums for the use of couches as may be usual on other lines furnishing like accommodations; such rules and regu-

lations shall be agreed upon as will most favor the renting of couches in said cars.

Article 6th. The said party of the first part, shall furnish, upon the same terms and conditions, additional cars whenever the aforesaid cars are not sufficient to fully accommodate the passengers desiring couches—and the compliance of the said party of the first part with the provisions of this article shall give them the exclusive right to the use of sleeping cars upon the railroad of the party
1075 of the second part during the continuance of the incorporation of the party of the first part.

Article 7th. It is expressly understood and agreed by the parties to this agreement that this contract may, at the option of either party, be terminated for want of sufficient patronage for the use of sleeping cars, upon six months' written notice being served upon the other party to that effect; but nothing in these articles of agreement shall be so constructed as to give to the said party of the second part, the right to terminate and make void this contract for the substitution of other sleeping cars at any time during the continuance of the incorporation of the party of the first part, without prejudice to the rights of the aforesaid party of the first part to recover such damages as it may thereby sustain or may have sustained.

In witness whereof the aforesaid parties of the first and second parts have hereunto set their hands and seals the day and year first above written.

(Signed) For the CENTRAL TRANSPORTATION CO.,
By O. W. CHILDS, *President.* [L. S.]
(Signed) INDIANAPOLIS & CINCINNATI R. R. CO.,
By H. C. LORD, *President.* [L. S.]

Sealed and delivered in presence of—

——— ———.

Articles of an agreement, made at Cincinnati, State of Ohio, this twenty-first day of December, A. D. 1867, by and between the Central Transportation Company, an incorporation under the general act of the State of Pennsylvania, the party of the first part; and the Ohio & Mississippi Railroad Company, the party of the second part, witnesseth as follows:

Article 1st. For and in consideration of the covenants hereinafter mentioned, the said Central Transportation Company hereby agrees to furnish to the aforesaid Ohio and Mississippi Railroad Company, three (3) sleeping cars with seats and couches constructed on the patented plans, now owned by the party of the first part, and known as Woodruff, Knight, Myer and others, consolidated patents for convertible seats and couches in sleeping cars—said cars to be
1076 constructed of the best material and in the most substantial and workmanlike manner; the bodies and trucks to be of such strength and constructed on such plan as may be required by the aforesaid party of the second part, and be fully equipped with all of their latest improvements and delivered to the said party of

the second part in all respects ready for use, on or before the — day of ——.

Article 2d. The said party of the first part are to keep the upholstery and bedding clean and in good order at their own expense, so far as usual wear and tear are concerned, and not otherwise; and the said party of the second part are to take all risk of casualties, both as to passengers and cars, which may occur while said cars are running on said railway, or any damages which may occur to said cars or passengers when not running, arising from negligence or bad management of the party of the second part.

Article 3d. The said party of the first part, is, at its own expense, to furnish two employés upon each of the said cars, one to act as porter, the other to preserve order and collect couch fares, as is hereinafter provided, both of whom shall be entitled to ride free while on duty; the said employés to be treated as the employés, and be subject to the rules and regulations of the aforesaid party of the second part.

Article 4th. The said party of the second part, in consideration of the use of the aforesaid sleeping cars are to haul the same on their railroad in all the night trains, and in such manner as will best accommodate passengers on said railroad requiring the use of sleeping cars; and the said party of the second part, shall, at its own expense, furnish fuel for the stoves and material for the lights, and keep said cars in good running order and repair, including renewals of worn-out parts, except such as are provided for in article 2nd of this agreement—the said cars to be treated so long as this agreement shall continue in all respects as the cars of the party of the second part, but nothing contained in this agreement shall be so construed as affecting the title of said party of the first part to the said cars after the termination of this contract.

Article 5th. The aforesaid party of the first part is to have the entire control of the admission of passengers into said sleep-
1077 ing cars, and shall be entitled to collect fifty cents for each and every couch occupied, or such other sums for the use of couches as may be usual on other lines furnishing like accommodations; such rules and regulations shall be agreed upon as will most favor the renting of couches in said cars.

Article 6th. The said party of the first part, shall furnish, upon the same terms and conditions, additional cars whenever the aforesaid cars are not sufficient to fully accommodate the passengers desiring couches, and the compliance of the said party of the first part with the provisions of this article shall give them the exclusive right to the use of sleeping cars upon the railroad of the party of the second part during the continuance of life of patents above named.

Article 7th. It is expressly understood and agreed by the parties to this agreement, that this contract may, at the option of either party, be terminated for want of sufficient patronage for the use of sleeping cars, upon six months' written notice being served upon the other party to that effect; but nothing in these articles of agreement shall be so construed as to give to the said party of the second

part, the right to terminate and make void this contract for the substitution of other sleeping cars at any time during the continuance of the incorporation of the party of the first part, without prejudice to the rights of the aforesaid party of the first part to recover such damages as it may thereby sustain or may have sustained.

In witness whereof, the aforesaid parties of the first and second parts have hereunto set their hands and seals the day and year first above written.

(Signed) THE CENTRAL TRANSPORTATION CO.,
By O. W. CHILDS, *President.* [L. S.]

(Signed) OHIO & MISSISSIPPI RAILWAY CO.,
By W. D. GRISWOLD, *President.* [L. S.]

Sealed and delivered in presence of—
(Signed) J. ERNEST GOODMAN.

Attested by—
J. F. COTTRINGER,
Secretary C. T. Co.

Attest: SAMUEL TREVOR,
Ass't Secretary.

1078 Articles of an agreement, made at Philadelphia, State of Pennsylvania, this tenth day of August, A. D. 1868, by and between the Central Transportation Company, an incorporation under the general act of the State of Pennsylvania, party of the first part, and the Columbus, Chicago and Indiana Central Railroad Company, the party of the second part, witnesseth, as follows:

Article 1st. For and in consideration of the covenants hereinafter mentioned, the said Central Transportation Company hereby agrees to furnish to the aforesaid Columbus, Chicago and Indiana Central Railroad Company, seven sleeping cars, with seats and couches constructed on the patented plans now owned by the party of the first part, and known as Woodruff, Knight, Myer and others, consolidated patents for convertible seats and couches in sleeping cars—said cars to be constructed of the best material and in the most substantial and workmanlike manner; the bodies and trucks to be of such strength and constructed on such plans as may be required by the aforesaid party of the second part, and be fully equipped with all of their latest improvements and delivered to said party of the second part in all respects ready for use, two on or before the 15th day of August, three on or about the 15th September, and two on or about the 1st November, 1868.

Article 2d. The said party of the first part are to keep the upholstery and bedding clean and in good order at their own expense, so far as usual wear and tear are concerned, and not otherwise; and the said party of the second part are to take all risk of casualties, both as to passengers and cars.

Article 3d. The said party of the first part, is, at its own expense, to furnish two employés upon each of the said cars, one to act as

porter, the other to preserve order and collect couch fares, as is hereinafter provided, both of whom shall be entitled to ride free while on duty; the said employés to be treated as the employés, and be subject to the rules and regulations of the aforesaid party of the second part.

Article 4th. The said party of the second part in consideration of the use of the aforesaid sleeping cars are to haul the same on their railroad in all the night trains, between Columbus, Ohio,
1079 and Chicago, Ill.; between Columbus, Ohio, and the State line of Illinois, via Logansport, Reynolds, &c.; between Columbus, Ohio, and Louisville, Ky.; and on any roads the party of the second part may have control over, between St. Louis and Columbus, or elsewhere, that may at any time hereafter require sleeping cars, excepting the rights conferred upon Frederick M. Colbern by contract with the Columbus and Indianapolis Central Railway Company, dated October 10th, 1866, and in such manner as will best accommodate passengers on said railroad requiring the use of sleeping cars; and the said party of the second part, shall, at its own expense, furnish fuel for the stoves and material for the lights, and keep said cars in good running order and repair, including renewals of worn-out parts, except such as are provided for in article 2d of this agreement; the said cars to be treated, so long as this agreement shall continue, in all respects as the cars of the party of the second part; but nothing contained in this agreement shall be so construed as affecting the title of the said party of the first part to the said cars after the termination of this contract.

Article 5th. The aforesaid party of the first part is to have the entire control of the admission of passengers into said sleeping cars, and shall be entitled to collect fifty cents for each and every couch occupied, or such other sums for the use of couches as may be usual on other lines furnishing like accommodations; such rules and regulations shall be agreed upon as will most favor the renting of couches in said cars.

Article 6th. The said party of the first part, shall furnish, upon the same terms and conditions, additional cars whenever the aforesaid cars are not sufficient to fully accommodate the passengers desiring couches—and the compliance of the said party of the first part with the provisions of this article shall give them the exclusive right to the use of sleeping cars upon the railroad of the party of the second part during the continuance of the incorporation of the party of the first part.

Article 7th. It is expressly understood and agreed by the parties to this agreement, that this contract may, at the option of either party, be terminated for want of sufficient patronage for the use of sleeping cars, upon six months' written notice being served
1080 upon the other party to that effect; but nothing in these articles of agreement shall be so construed as to give to the said party of the second part, the right to terminate and make void this contract for the substitution of other sleeping cars at any time during the continuance of the incorporation of the party of the first part, without prejudice to the rights of the aforesaid party of

the first part to recover such damages as it may thereby sustain or may have sustained.

In witness whereof, the aforesaid parties of the first and second parts have hereunto set their hands the day and year first above written.

THE CENTRAL TRANSPORTATION CO.,

(Signed) By O. W. CHILDS, *President.* [L. S.]

COL., CHI. & IND. CEN. R'Y CO.,

(Signed) By B. E. SMITH, *President.* [L. S.]

Sealed and delivered in presence of—

Witness to signature of O. W. Childs, president:

(Signed) J. ERNEST GOODMAN.

(Signed) J. F. COTTRINGER.

D. RICKETS,

Witness to signature of B. E. Smith.

Articles of an agreement, made at Philadelphia, State of Pennsylvania, this first day of September, A. D. 1868, by and between the Central Transportation Company, an incorportation under the general act of the State of Pennsylvania, the party of the first part, and the Terre Haute and Indianapolis Railroad Company, the party of the second part, witnesseth as follows:

Article 1st. For and in consideration of the covenants hereinafter mentioned, the said Central Transportation Company hereby agrees to furnish to the aforesaid Terre Haute and Indianapolis Railroad Company two (2) sleeping cars, with seats and couches constructed on the patented plans now owned by the party of the first part, and known as Woodruff, Knight, Myer and others, consolidated patents for convertible seats and couches in sleeping cars—said cars
1081 to be constructed of the best material and in the most substantial and workmanlike manner; the bodies and trucks to be of such strength and constructed on such plan as may be required by the aforesaid party of the second part, and be fully equipped with all of their latest improvements, and delivered to said party of the second part in all respects ready for use, on or before the opening of the through lines for passenger travel on the St. Louis, Vandalia and Terre Haute Railroad Company.

Article 2d. The said party of the first part are to keep the upholstery and bedding clean and in good order at their own expense, so far as usual wear and tear are concerned, and not otherwise; and the said party of the second part are to take all risk of casualties, both as to passengers and cars.

Article 3d. The said party of the first part, is, at its own expense, to furnish two employés upon each of the said cars, one to act as porter, the other to preserve order and collect couch fares, as is hereinafter provided, both of whom shall be entitled to ride free while on duty; the said employés to be treated as the employés, and be subject to the rules and regulations of the aforesaid party of the second part.

Article 4th. The said party of the second part in consideration of

the use of the aforesaid sleeping cars, are to haul the same on their railroad in all the night trains, and in such manner as will best accommodate passengers on said railroad requiring the use of sleeping cars; and the said party of the second part, shall, at its own expense, furnish fuel for the stoves and material for the lights, and keep said cars in good running order and repair, including renewals of worn-out parts, except such as are provided for in article 2d of this agreement; the said cars to be treated, so long as this agreement shall continue, in all respects as the cars of the party of the second part; but nothing contained in this agreement shall be so construed as affecting the title of the said party of the first part to the said cars after the termination of this contract.

Article 5th. The aforesaid party of the first part is to have the entire control of the admission of passengers into said sleeping cars, and shall be entitled to collect fifty cents for each and every couch occupied, or such other sums for the use of couches as may
1082 be usual on other lines furnishing like accommodations; such rules and regulations shall be agreed upon as will most favor the renting of couches in said cars.

Article 6th. The said party of the first part, shall furnish, upon the same terms and conditions, additional cars whenever the aforesaid cars are not sufficient to fully accommodate the passengers desiring couches—and the compliance of the said party of the first part with the provisions of this article shall give them the exclusive right to the use of sleeping cars upon the railroad of the party of the second part during the continuance of the incorporation of the party of the first part; excepting the right heretofore granted by written contract with the Indianapolis and St. Louis Sleeping Couch Company.

Article 7th. It is expressly understood and agreed by the parties to this agreement, that this contract may, at the option of either party, be terminated for want of sufficient patronage for the use of sleeping cars, upon six months' written notice being served upon the other party to that effect; but nothing in these articles of agreement shall be so construed as to give to the said party of the second part, the right to terminate and make void this contract for the substitution of other sleeping cars at any time during the continuance of the incorporation of the party of the first part, without prejudice to the rights of the aforesaid party of the first part to recover such damages as it may thereby sustain or may have sustained. This contract to continue in force for the term of ten years from date hereof.

In witness whereof, the aforesaid parties of the first and second parts have hereunto set their hands and seals the day and year first above written.

(Signed) THE CENTRAL TRANSPORTATION CO.,
By O. W. CHILDS, *President.* [L. S.]

(Signed) THE TERRE HAUTE & IND. R. R. CO.,
By WM. R. McKEEN, *President.* [L. S.]

Sealed and delivered in presence of—
Witness to signature of O. W. Childs, president:
(Signed) WM. H. BENEDICT.
J. ERNEST GOODMAN.
(Signed) E. P. HUSTON.
Witness to signature of W. R. McKeen, president.

1083 Articles of an agreement, made at Philadelphia, State of Pennsylvania, this first day of September, A. D. 1868, by and between the Central Transportation Company, an incorporation under the general act of the State of Pennsylvania, the party of the first part; and the St. Louis, Vandalia and Terre Haute Railroad Company, the party of the second part, witnesseth as follows:

Article 1st. For and in consideration of the covenants hereinafter mentioned, the said Central Transportation Company hereby agrees to furnish to the aforesaid St. Louis, Vandalia and Terre Haute Railroad Company two (2) sleeping cars with seats and couches constructed on the patented plans, now owned by the party of the first part, and known as Woodruff, Knight, Myer and others, consolidated patents for convertible seats and couches in sleeping cars—said cars to be constructed of the best material and in the most substantial and workmanlike manner; the bodies and trucks to be of such strength and constructed on such plan as may be required by the aforesaid party of the second part, and be fully equipped with all of their latest improvements and delivered to said party of the second part in all respects ready for use, on or before the opening of the through line for passengers upon said road.

Article 2nd. The said party of the first part are to keep the upholstery and bedding clean and in good order at their own expense, so far as usual wear and tear are concerned, and not otherwise; and the said party of the second part are to take all risk of casualties, both as to passengers and cars.

Article 3rd. The said party of the first part, is, at its own expense, to furnish two employés upon each of the said cars, one to act as porter, the other to preserve order and collect couch fares, as is hereinafter provided, both of whom shall be entitled to ride free while on duty: the said employés to be treated as the employés, and be subject to the rules and regulations of the aforesaid party of the second part.

Article 4th. The said party of the second part, in consideration of the use of the aforesaid sleeping cars, are to haul the same on their railroad in all the night trains, and in such manner as
1084 will best accommodate passengers on said railroad requiring the use of sleeping cars; and the said party of the second part, shall, at its own expense, furnish fuel for the stoves and material for the lights, and keep said cars in good running order and repair, including renewals of worn-out parts, except such as are provided for in article 2d of this agreement—the said cars to be treated so long as this agreement shall continue in all respects as the cars of the party of the second part, but nothing contained in this agree-

ment shall be so construed as affecting the title of the said party of the first part to the said cars after the termination of this contract.

Article 5th. The aforesaid party of the first part is to have the entire control of the admission of passengers into said sleeping cars, and shall be entitled to collect fifty cents for each and every couch occupied, or such other sums for the use of couches as may be usual on other lines furnishing like accommodations; such rules and regulations shall be agreed upon as will most favor the renting of couches in said cars.

Article 6th. The said party of the first part, shall furnish, upon the same terms and conditions, additional cars whenever the aforesaid cars are not sufficient to fully accommodate the passengers desiring couches, and the compliance of the said party of the first part with the provisions of this article shall give them the exclusive right to the use of sleeping cars upon the railroad of the party of the second part, except that part of the road between Effingham and St. Louis, and for the term of ten years from date.

Article 7th. It is expressly understood and agreed by the parties to this agreement, that this contract may, at the option of either party, be terminated for want of sufficient patronage for the use of sleeping cars, upon six months' written notice being served upon the other party to that effect; but nothing in these articles of agreement shall be so construed as to give to the said party of the second part, the right to terminate and make void this contract for the substitution of other sleeping cars at any time during the continuance of the incorporation of the party of the first part, without prejudice to the rights of the aforesaid party of the first part to recover such damages as it may thereby sustain or may have sustained.

1085 The above exception west of Effingham, refers only to the rights reserved to grant like privileges to other parties.

In witness whereof, the aforesaid parties of the first and second parts have hereunto set their hands and seals the day and year first above written.

(Signed) THE CENTRAL TRANSPORTATION CO.,
By O. W. CHILDS, *President.* [L. S.]

(Signed) THE TERRE HAUTE & IND. R. R. CO.,
Lessee of the St. Louis, Vandalia & Terre Haute R. R. Co.,
By WM. R. McKEEN, *President.* [L. S.]

Sealed and delivered in presence of—
Witnesses to signature of O. W. Childs, president:
(Signed) WM. H. BENEDICT.
J. ERNEST GOODMAN.
(Signed) E. P. HUSTON,
Witness to signature of W. R. McKeen, president.

Articles of an agreement, made at Philadelphia, State of Pennsylvania, this sixth day of October, A. D. 1868, by and between the Central Transportation Company, an incorporation under the gen-

eral act of the State of Pennsylvania, the party of the first part, and the Jeffersonville, Madison & Indianapolis Railroad Company, the party of the second part, witnesseth, as follows:

Article 1st. For and in consideration of the covenants hereinafter mentioned, the said Central Transportation Company hereby agrees to furnish to the aforesaid Jeffersonville, Madison and Indianapolis Railroad Company, four sleeping cars, with seats and couches constructed on the patented plans now owned by the party of the first part, and known as Woodruff, Knight, Myer and others, consolidated patents for convertible seats and couches in sleeping cars—said cars to be constructed of the best material and in the most substantial and workmanlike manner; the bodies and trucks to be of such strength and constructed on such plan as may be required by the aforesaid party of the second part, and be fully equipped
1086 with all of their latest improvements and delivered to said party of the second part in all respects ready for use, on or before the 1st day of February, 1869.

Article 2d. The said party of the first part are to keep the upholstery and bedding clean and in good order at their own expense, so far as usual wear and tear are concerned, and not otherwise; and the said party of the second part are to take all risk of casualties, both as to passengers and cars.

Article 3rd. The said party of the first part, is, at its own expense, to furnish two employés upon each of the said cars, one to act as porter, the other to preserve order and collect couch fares, as is hereinafter provided, both of whom shall be entitled to ride free while on duty; the said employé to be treated as the employés, and be subject to the rules and regulations of the aforesaid party of the second part.

Article 4th. The said party of the second part in consideration of the use of the aforesaid sleeping cars are to haul the same on their railroad running between Jeffersonville, Ind., and Cambridge City, via Columbus, Ind., in all the night trains, and in such manner as will best accommodate passengers on said railroad requiring the use of sleeping cars; and the said party of the second part, shall, at its own expense, furnish fuel for the stoves and material for the lights, and keep said cars in good running order and repair, including renewals of worn-out parts, except such as are provided for in article 2d of this agreement; the said cars to be treated, so long as this agreement shall continue in all respects as the cars of the party of the second part; but nothing contained in this agreement shall be so construed as affecting the title of the said party of the first part to the said cars after the termination of this contract.

Article 5th. The aforesaid party of the first part is to have the entire control of the admission of passengers into said sleeping cars, and shall be entitled to collect fifty cents for each and every couch occupied, or such other sums for the use of couches as may be usual on other lines furnishing like accommodations; such rules and regulations shall be agreed upon as will most favor the renting of couches in said cars.

1087 Article 6th. The said party of the first part shall furnish, upon the same terms and conditions, additional cars whenever the aforesaid cars are not sufficient to fully accommodate the passengers desiring couches—and the compliance of the said party of the first part with the provisions of this article shall give them the exclusive right to the use of sleeping cars upon the railroad of the party of the second part during the continuance of the incorporation of the party of the first part.

Article 7th. It is expressly understood and agreed by the parties to this agreement, that this contract may, at the option of either party, be terminated for want of sufficient patronage for the use of sleeping cars, upon six months' written notice being served upon the other party to that effect; but nothing in these articles of agreement shall be so construed as to give to the said party of the second part, the right to terminate and make void this contract for the substitution of other sleeping cars at any time, during the continuance of the incorporation of the party of the first part, without prejudice to the rights of the aforesaid party of the first part to recover such damages as it may thereby sustain or may have sustained.

The object and intent of this contract is for the purpose of forming a through line, "Louisville to New York," without change of cars.

In witness whereof, the aforesaid parties of the first and second parts have hereunto set their hands and seals the day and year first above written.

(Signed) THE CENTRAL TRANSPORTATION COMPANY,
By O. W. CHILDS, *President.* [L. S.]
(Signed) JEFF., MAD. & IND. R. R. CO.,
By D. RICKETS, *President.* [L. S.]

Sealed and delivered in presence of—
(Signed) B. E. SMITH.
J. F. COTTRINGER.

1088 Articles of an agreement, made at Louisville, Kentucky, this seventeenth day of August, A. D. 1869, by and between the Central Transportation Company, an incorporation under the general act of the State of Pennsylvania, the party of the first part, and the Louisville, Cincinnati and Lexington Railroad Company, the party of the second part, witnesseth as follows:

Article 1st. For and in consideration of the covenants hereinafter mentioned, the said Central Transportation Company hereby agrees to furnish to the aforesaid Louisville, Cincinnati and Lexington Railroad Company two (2) sleeping cars, with seats and couches constructed on the patented plans now owned by the party of the first part, and known as Woodruff, Knight, Myer and others, consolidated patents for convertible seats and couches in sleeping cars—said cars to be constructed of the best material and in the most substantial and workmanlike manner; the bodies and trucks to be of such strength and constructed on such plan as may be required by the aforesaid party of the second part, and be fully equipped with all

of their latest improvements, and delivered to said party of the second part in all respects ready for use on or before the 10th day of September, 1869.

Article 2d. The said party of the first part are to keep the upholstery and bedding clean and in good order at their own expense, so far as usual wear and tear are concerned, and not otherwise; and the said party of the second part are to take all risk of casualties, both as to passengers and cars.

Article 3d. The said party of the first part, is, at its own expense, to furnish two employés upon each of the said cars, one to act as porter, the other to preserve order and collect couch fares, as is hereinafter provided, both of whom shall be entitled to ride free while on duty; the said employés to be treated as the employés, and be subject to the rules and regulations of the aforesaid party of the second part.

Article 4th. The said party of the second part in consideration of the use of the aforesaid sleeping cars, are to haul the same on their railroad in all the night trains, and in such manner as will
1089 best accommodate passengers on said railroad requiring the use of sleeping cars; and the said party of the second part shall, at its own expense, furnish fuel for the stoves and material for the lights, and keep said cars in good running order and repair, including renewals of worn-out parts, except such as are provided for in article 2d of this agreement; the said cars to be treated, so long as this agreement shall continue, in all respects as the cars of the party of the second part; but nothing contained in this agreement shall be so construed as affecting the title of the said party of the first part to the said cars after the termination of this contract. The said party of the second part to furnish at a terminal station suitable facilities for airing and cleaning the bedding and upholstery of the said cars provided for in articles 1 and 6 of this agreement.

Article 5th. The aforesaid party of the first part is to have the entire control of the admission of passengers into said sleeping cars, and shall be entitled to collect fifty cents for each and every couch occupied, or such other sums for the use of couches as may be usual on other lines furnishing like accommodations; such rules and regulations shall be agreed upon as will most favor the renting of couches in said cars.

Article 6th. The said party of the first part shall furnish, upon the same terms and conditions, additional cars whenever the aforesaid cars are not sufficient to fully accommodate the passengers desiring couches—and the compliance of the said party of the first part with the provisions of this article shall give them the exclusive right to the use of sleeping cars upon the railroad of the party of the second part during the continuance of the incorporation of the party of the first part; also, of reclining sleeping-chair cars on night trains.

Article 7th. It is expressly understood and agreed by the parties to this agreement, that this contract may, at the option of either party, be terminated for want of sufficient patronage for the use of sleeping cars, upon six months' written notice being served upon the other party to that effect; but nothing in these articles of agree-

ment shall be so construed as to give to the said party of the second part, the right to terminate and make void this contract for
1090 the substitution of other sleeping cars at any time during the continuance of the incorporation of the party of the first part, without prejudice to the rights of the aforesaid party of the first part to recover such damages as it may thereby sustain or may have sustained; provided, however, that inasmuch as this agreement is made in the expectation that said railroad company will, within two years from this date, change the gauge of their road so as to make it conform to that of other northern roads operated by said sleeping car company, now, if within said period it shall be determined by said railroad company to retain their present gauge, then either party may terminate this agreement by one month's notice in writing to the other, and said railroad company shall compensate the sleeping car company for the actual expense incurred by them in placing their sleeping cars upon their tracks.

In witness whereof, the aforesaid parties of the first and second parts have hereunto set their hands and seals the day and year first above written.

(Signed) W. Z. DUDLEY, [L. S.]
Chm. Lou., Cin. & Lex. R. R.

(Signed) THE CENTRAL TRANSPORTATION CO.,
By O. W. CHILDS, *President.* [L. S.]

Sealed and delivered in presence of—
(Signed) J. E. GEMPERLING.
Witness to W. Z. Dudley.
(Signed) J. F. COTTRINGER,
Witness to O. W. Childs.

Attest:
(Signed) W. H. BEQUROTH, *Secretary.* [L. S.]

"A."

This indenture, made the seventeenth day of February, A. D. 1870, between the Central Transportation Company, a corporation existing under the laws of the Commonwealth of Pennsylvania, of the first part, and George M. Pullman, a trustee for Pullman's Palace Car Company, a corporation existing under the law of the State of Illinois, of the second part, witnesseth:

1091 That, in consideration of the covenants and agreements on the part of the said Pullman's Palace Car Company to the said first party, to be by them kept and performed, mentioned in a certain agreement of this date between said Central Transportation Company and Pullman's Palace Car Company, and also in consideration of the sum of one dollar paid to the said first party by the said second party, the receipt whereof is hereby acknowledged, have and do hereby sell, assign, convey, transfer and release to the said second party in trust, as aforesaid, his assigns and successors, all the right title and interest of the said party of the first part in and to

all and singular the inventions as secured by letters patent, reissue and extensions mentioned in the following schedule, as fully and entirely as the same are now or could be held and owned by said party of the first part.

No. 16159, granted December 2d, 1856, to T. T. Woodruff, and reissued, No. 1439, March 17th, 1863, for improvement in railroad-car seats and couches.

No. 16160, granted December 2d, 1856, to T. T. Woodruff, for improvement in railroad-car seats and couches.

No. 24257, granted May 31st, 1859, to Theodore T. Woodruff, for improvements in seats and couches for railroad cars.

No. 26942, granted January 24th, 1860, to Theodore T. Woodruff, for improvement in seats and couches of railroad cars.

No. 24563, granted June 28th, 1859, to Edward C. Knight, for improvement in arranging couches in railroad cars.

No. 25570, granted September 27th, 1859, to Edward C. Knight, for improved mode of arranging couches in railroad cars.

No. 27297, granted February 28th, 1860, to Edward C. Knight, for improvement in couches for railroad cars.

No. 11699, granted September 19th, 1854, to H. B. Myer, for improvement in converting railroad-car seats into beds or lounges, reissued May 3d, 1859, No. 711, and October 8th, 1861, No. 123, whole number, 1227, and extended seven years from September 19th, 1868.

No. 21099, granted August 3d, 1858, to Eli Wheeler, for
1092 improvement in sleeping cars for railroads, and reissued September 18th, 1860, No. 1043.

No. 25499, granted September 20th, 1859, to Eli Wheeler, for improvement in railroad-car seats.

No. 29137, granted July 17th, 1860, to Wm. A. Brown, for improvement in couches for railroad cars.

No. 2975, whole number 33979, granted December 24th, 1861, to Wm. A. Brown, for improvement in railroad-car ventilators.

No. 30254, granted May, 1858, to J. B. Creighton, for improvement in railroad cars for day and night service, and reissued September 21st, 1858, No. 602, and reissued to Jacob H. Myer, May 4th, 1869.

No. 21600, granted September 28th, 1858, to J. B. Creighton, for improvement in couches in railroad cars.

No. 22364, granted December 21st, 1858, to Plymon B. Green for improvement in seats and sleeping couches for railroad cars.

No. 71258, granted November 19th, 1867, to Jonah Woodruff for improvement in sleeping cars.

No. 30517, granted October 23d, 1860, to Edward Burke, for improvement in seats and couches for railroad cars, also a license to use patented "car couplings," granted to the Central Transportation Company, August 16th, 1866, under patents issued July 3d, 1860, to I. W. Van Houten, Henry Wood, Joseph Wood and E. R. Bennett.

together with all and every, the renewals, reissues and extensions hereof, heretofore, or which hereafter may be made. And also all right, title and interest in and to any and all letters patent, patent

rights or inventions, or right of use of inventions connected with or in any way appertaining to railway cars belonging to said first party, whether enumerated in the foregoing schedule or otherwise, and also, all the right, title, interest and claim of said first party to all dues and sums of money arising from contracts for the use or sale of patent rights made by said first party with and to individuals or corporations, or to which said first party may be entitled by reason of any contracts or licenses heretofore made by any
1093 person or persons, whenever the same may be due, and for the only proper use and behoof of the said second party in trust, as aforesaid, his successors and assigns.

In witness whereof, the party of the first part hath caused its corporate seal — be attached hereto, attested by the president and secretary, the day and year first above written.

(Signed) O. W. CHILDS, [L. S.]
President of the Central Transportation Co.

Attest: J. F. COTTRINGER, *Secretary.*

On this seventeenth day of February, A. D. 1870, personally appeared before me, O. W. Childs, to me known, who, being duly sworn, deposes and says, that he is the president of the Central Transportation Company, of Pennsylvania, that he knows the corporate seal of said company, and that the seal affixed to the foregoing instrument is the corporate seal of such company, that it was affixed thereto by order of the board of directors of said company, and that he signed the name of said company to said instrument as the act and deed of said company, for the uses and purposes therein set forth by order of said board.

In witness whereof, I have hereunto set my hand and official seal.

(Signed) JOSHUA SPERING, [L. S.]
A Notary Public for the Commonwealth of Pennsylvania,
Residing in the City of Philadelphia.

1094 *Second. Debts of the Central Transportation Company, December 31st. 1869.*

Pennsylvania Railroad Company:

Bills previous to December 31st, 1869	$1,085 63
For car No. 65, about	12,000 00
For car No. 98	8,531 92

Ohio & Mississippi Railroad Company:

For car No. 54, balance due	2,037 86
For car No. 37, amount to December 31st, 1869, about	1,000 00

Pittsburgh, Cincinnati and St. Louis railroad:			
For bills for work done to cars Nos. 91 and 92		$19,147 94	
Less allowance	$1,147 94		
	1,228 24		
		2,376 18	
		$16,771 76	
To be deducted for destruction of cars Nos. 65 and 12		11,500 00	
			$5,271 76
Columbus, Chicago and Indiana Central railroad:			
For work to cars Nos. 91 and 92		$5,896 24	
Less allowance agreed upon		896 24	
			5,000 00
Harlan & Hollingsworth Company:			
For work done to cars Nos. 100 and 117			4,630 99
Pittsburgh, Ft. Wayne and Chicago Railway Company:			
Bills for repairs to December 31st, 1869			837 97
Jeffersonville, Madison and Indianapolis railroad:			
Bills for repairs to December 31st, 1869			361 95
Pittsburgh, Cincinnati and St. Louis Railway Company:			
For repairs to car No. 79, about			400 00
Marietta and Cincinnati Railroad Company:			
For repairs to car No. 64, about			1,200 00
Bellefontaine line:			
Repair bills to December 31st, 1869, about			250 00
George Harding:			
For services as patent attorney, to December 31st, 1869.			250 00
1095 Wilhelm & Neumann:			
Bills for metal car trimmings to December 31st, 1869			1,615 16
Crerar, Adams & Co.:			
Bills for metal car trimmings to December 31st, 1869			129 38
Murdock & Lacey:			
Patent pumps for car No. 54			271 75
I. E. Walraven:			
For mattress covers, car No. 98			152 08

Leedom, Shaw & Stewart:		
For carpets, &c., car No. 98....		$127 43
W. J. Howard:		
Counsel fee for preparing lease.....	$1,000 00	
Legislative expenses, enrollment tax, printing, &c. ..	785 75	
		1,785 75
J. E. Goodman:		
Small expenses to December 31st, 1869.		43 45
		$46,983 08

All other debts and claims, but the amounts of such debts and claims, whether enumerated in the foregoing exhibit or otherwise, not to exceed the sum of sixty-three thousand nine hundred and ninety-eight $\frac{69}{100}$ dollars, ($63,998.69), that being the amount of cash transferred on the first day of January, 1870, by the Central Transportation Company to Pullman's Palace Car Company.

[U. S. revenue, $1.55.]

Recorded April 28th, 1870.

1096 CITY OF PHILADELPHIA, *ss:*

I, John A. Houseman, recorder of deeds of the said city, do hereby certify, that the within and aforegoing is a true and correct copy of an instrument of writing, found of record in my office, in Deed Book J. A. H., No. 139, page 1, etc.

Witness my hand and seal of office this twelfth day of January, A. D. 1872.

JOHN A. HOUSEMAN, *Recorder.* [L. S.]

EXHIBIT B.

Pullman's Palace Car Company.

Statement of the 119 *Central Transportation Co.'s Cars Turned Over to this Company.*

No.	Assigned to—	Sold to or settled by—	Amount received in settlement.	Date out of service.	
1	Penna. R. R.	Penna. R. R.	$7,000 00	April, 1874	
2	"	"	7,000 00	Nov., 1872	
3	Phila. & E.	"	7,000 00	March, 1871	
4	Penna. R. R.	"	9,000 00	Feb., 1871	
5	P. Ft. W. & C.	"	6,000 00	March, 1871	
6	"	"	6,000 00	March, 1871	
7	Penna. R. R.	"	7,000 00	Dec., 1870	
8	P. C. & St. L.	P. C. & St. L.	7,000 00	Feb., 1873	
9	C. C. & I. C.	"	7,000 00	March, 1872	
10	Penna. R. R.	Penna. R. R.	7,000 00	Oct., 1870	
11	P. Ft. W. & C.	P. Ft. W. & C.	7,000 00	Jan., 1873	
12	"	"	7,000 00	Jan., 1873	
13	Bellefontaine			April, 1881	"Leavenworth" stored at Pullman.
14	"			Feb., 1887	Renamed "Neosho" now stored at Bangor.
15	Nor. Cent.	Penna. R. R.	7,000 00	July, 1873	
16	"	"	7,000 00	Aug., 1874	
17	Penna. R. R.	"	7,000 00	Jan., 1871	
18	"	"	7,000 00	Feb., 1871	
19	"	"	7,000 00	Feb., 1871	
20	"	"	7,000 00	May, 1871	
21	"	"	7,000 00	Jan., 1871	
22	"			May, 1879	Stored at Altoona.
23	P. Ft. W. & C.			Oct., 1882	" "
24	"	P. Ft. W. & C.	6,000 00	May, 1871	
1098					
25	Penna. R. R.	Penna. R. R.	8,500 00	Feb., 1871	
26	B. & O.	B. & O.	1,000 00	May, 1871	

CENTRAL TRANSPORTATION CO.

Exhibit B—Continued.

No.	Assigned to—	Sold to or settled by—	Amount received in settlement.	Date out of service.	
27	P. C. & St. L.	P. C. & St. L.	$7,000 00	Jan., 1873	
28	B. & O.	B. & O.	1,000 00	Dec., 1870	
29	Wash. air line			Feb., 1870	Broken up at Wilmington.
30	Penna. R. R.			Jan., 1877	Stored at Altoona.
31	B. & O.	B. & O.	1,000 00	Dec., 1870	
32	Nor. Cent.	Phila. & E.	8,000 00	Jan., 1872	
33	B. & O.	B. & O.	1,000 00	Dec., 1870	
34	Penna. R. R.	Penna. R. R.	7,000 00	Dec., 1871	
35	Wash. air line			Aug., 1879	Stored at Altoona.
36	Ohio & Miss	O. & M.	4,000 00	May, 1882	
37	"	"	9,991 25	Feb., 1875	
38	Penna. R. R			Oct., 1877	Stored at Altoona.
39	C. H. & D.			June, 1880	" "
40	"			June, 1880	" "
41	Penna. R. R.	Penna. R. R.	7,000 00	Jan., 1871	
42	Wash. air line			Aug., 1879	" "
43	I. C. & L.	I. C. & L.	2,500 00	Oct., 1872	
44	"	"	2,500 00	Oct., 1872	
45	B. & O.	B. & O.	1,000 00	Oct., 1870	
46	"	"	1,000 00	April, 1873	
47	Penna. R. R.	Penna. R. R.	7,000 00	March, 1871	
48	"	"	7,000 00	March, 1871	
49	"	"	7,000 00	Feb., 1871	
50	"	"	7,000 00	March, 1871	
51	P. Ft. W. & C.	P. Ft. W. & C.	6,000 00	Jan., 1871	
52	"	"	7,000 00	July, 1873	
53	O. & M.	O. & M.	9,991 26	April, 1871	
54	"	"	4,000 00	April, 1871	
55	Bellefontaine	Ala. C.	6,101 57	July, 1873	
56	Penna. R. R.	Penna. R. R.	7,000 00	Jan., 1871	
57	Bellefontaine			Feb., 1887	Renamed "Cherokee." Now stored at Mt. Desert.
58	Penna. R. R.	Penna. R. R.	7,000 00	Nov., 1870	

1099					
59	P. & E.	Penna. R. R.	7,000 00	Feb., 1870	
60	P. & E.	"	7,000 00	March, 1871	
61	B. & O.	B. & O.	1,000 00	Dec., 1870	
62	B. & O.	"	1,000 00	Aug., 1871	
63	Mar. & Cinti			Jan., 1873	Burned in 1873 while stored at Zaleski on M. & C. R. R.
64	"			April, 1873	Last record stored at Chillicothe 1873.
65	Penna. R. R.			Oct., 1878	Stored at Altoona.
66	P. C. & St. L.	P. C. & St. L	6,000 00	Jan., 1871	
67	"	"	5,000 00	Nov., 1872	
68	P. Ft. W. & C.	P. Ft. W. & C.	6,000 00	March, 1871	
69	"	"	7,000 00	April, 1873	
70	Penna. R. R.	Penna. R. R.	7,000 00	Sept., 1873	
71	"			Oct., 1877	Stored at Altoona.
72	"	Penna. R. R.	7,000 00	April, 1874	
73	P. Ft. W. & C.	P. Ft. W. & C.	7,000 00	June, 1873	
74	"	"	7,000 00	June, 1873	
75	Penna. R. R.	Penna. R. R	7,000 00	Sept., 1872	
76	"	Allegheny Co., Pa	6,864 37	June, 1877	Destroyed in Pittsburg riots.
77	P. Ft. W. & C.	P. Ft. W. & C.	7,000 00	Dec., 1874	
78	"	"	7,000 00	Dec., 1874	
79	C. C. & I. C.	P. C. & St. L.	7,000 00	March, 1872	
80	"	C. C. & I. C.	6,000 00	Dec., 1874	
81	Wash. air line		1,132 35	Dec., 1876	Destroyed by fire while lying at Pullman.
82	"			Dec., 1876	Stored at Pullman.
83	"				
84	"				
85	P. Ft. W. & C.	Penna. R. R.	11,982 76	Sept., 1874	
86	"			June, 1887	Renamed "Swatara." Now stored at Pullman.
87	Penna. R. R.			Oct., 1877	Stored at Altoona.
1100					
88	Penna. R. R.			Oct., 1887	Stored at Altoona.
89	"			March, 1878	" "
90	"	Penna. R. R.	7,000 00	Feb., 1875	
91	"			Oct., 1885	Renamed "Linden." Stored at Pullman.
92	"	Penna. R. R.	9,000 00	March, 1872	
93	"			May, 1879	Stored at Altoona.

607

Exhibit B—Continued.

No.	Assigned to—	Sold to or settled by—	Amount received in settlement.	Date out of service.	
94	Penna. R. R.			Oct., 1878	Stored at Altoona.
95	"			May, 1879	" "
96	"			Oct., 1878	" "
97	"			May, 1879	" "
98	"			Oct., 1878	" "
99	"	Penna. R. R.	$7,000 00	Jan., 1871	
100	L. C. & L.			Dec., 1874	" "
101	B. & O.	B. & O.	1,000 00	Dec., 1874	
102	Penna. R. R.	Penna. R. R.	7,000 00	Jan., 1871	
103	O. & M.	O. & M.	4,000 00	May, 1882	
104	P. C. & St. L.	P. C. & St. L.	7,000 00	Oct., 1875	
105	"	"	7,000 00	Oct., 1875	
106	C. C. & I. C.			Still in service.	Remodelled into hunting car "Izaak Walton."
107	"			" "	" " " " "Davy Crockett."
108	Wash. air line			Dec., 1876	Stored at Pullman.
109	"			Dec., 1876	" "
110	Penna. R. R.			Oct., 1878	Stored at Altoona.
111	"			Oct., 1877	" "
112	Nor. Cent.			Oct., 1877	" "
113	"			Oct., 1877	" "
114	Penna. R. R.			Oct., 1877	" "
115	"	Alleg. Co., Pa.	6,797 71	July, 1877	Destroyed in Pittsburg riots.
116	B. & O.	B. & O.	1,000 00	April, 1873	
117	L. C. & L.			Oct., 1873	Stored at Altoona.
118	Penna. R. R.	Penna. R. R.	7,000 00	Jan., 1871	
119	"			May, 1879	" "
			$462,361 27		

The foregoing statements are taken from the books of the respondent, and as they may be inaccurate in some respects, they are given subject to such additions or corrections as testimony may show to be proper. They are as accurate as they can now be made.

1101 EXHIBIT C.

Inventories of Equipment in Cars and Stock-rooms of the Central Transportation Company, December 31st, 1869.

Invoice of equipment and operating material in store-room, Philadelphia and Baltimore districts, January 1st, 1870.

316 blankets (standard).
92 mattresses (sponge).
50 mattress covers.
192 pillows (large).
288 sheets "
380 pillow-cases (large).
62 roller towels.
300 hand towels.
6 rubber mats.
4 W. B. mats.
2 floor carpet-.
4 vest. "
69 china spittoons.
51 iron spittoons.
10 combs.
10 hair brushes.
13 whisks.
7 buckets.
2 brooms.
2 feather dusters.
4 counter-dusters.
14 chamois skins.
14 sponges.
5 silver brushes.
14 scrub-brushes.
12 screw-drivers.
6 monkey-wrenches.
11 hatchets.
11 lamp scissors.
111 blankets (S. red).
5 mops.
232 spreads (B. & W.).

Invoice of equipment and operating material in store-room and laundry, Pittsburg district, on the 1st January, 1870.

2 blankets (single red).
1,130 mattress covers.
2 pillows (large).
3 pillows (small).
841 sheets (large).
830 " (small).
1,123 pillow-cases (large).
1,748 " " (small).
527 roller towels.
330 hand towels.
157 spreads (white).
119 sheets (linen).
50 berth curtains.
5 W. B. mats.
21 carpets (vestibule).
5 aisle carpets.
9 floor carpets.
35 saloon carpets.
34 china spittoons.
183 iron spittoons.
16 brooms.
1 dust-pan.
46 mattress ticks (large).
17 " " (small).
166 " covers (striped).
91 " " (small).
9 porters' socks.
7 yards mattress ticking.
486 " pillow "
1 screw-driver.
2 monkey-wrenches.
1 hatchet.
1 hammer.
6 oil cans.
5 fire shovels.
5 fire pokers.
5 blankets (white).
33 standard P. S. blankets.
112 quilts (blanket-filled).
69 quilts (cotton-filled).
14 coverlets (woolen).

1102 Invoice of equipment and operating material in store-room Jersey City district, January 1st, 1870.

12 combs.
12 hair brushes.
8 buckets.
1 broom.
4 feather dusters.
4 counter-dusters.
12 chamois skins.
15 sponges.
9 silver brushes.
7 boxes toilet soap.
75 lbs. soap.
1 box stove polish.
11 screw-drivers.
3 monkey-wrenches.
10 hatchets.
9 lamp scissors.
7 mops.
18 saloon locks.

Invoice of equipment and operating material in laundry, Cincinnati district, January 1st, 1870.

298 sheets (small).
182 sheets (large).
572 pillow-cases (large).
141 " " (small).
108 roller towels.
36 china spittoons.
50 iron spittoons.
160 quilts (C. F).
12 spreads (white).

Invoice of equipment and operating material in store-room, Indianapolis district, January 1st, 1870.

2 mattress covers.
48 sheets (large).
62 pillow-cases (large).
11 " " (small).
36 roller towels.
4 combs.
5 hair brushes.
4 whisks.
5 brooms.
2 scrub-brushes.
36 cakes toilet soap.
62 bars soap.
3 screw-drivers.
432 lamp wicks.

Invoice of equipment and operating material in store-room and laundry, Chicago district, 1st January, 1870.

2 blankets (standard).
28 mattresses.
204 sheets (large).
193 sheets (small).
1,080 pillow-cases (large).
321 " " (small).
98 roller towels.
443 hand towels.
8 berth curtains.
110 window curtains.
3 aisle carpet-.
3 floor carpet-.
2 vest. carpet-.
3 china spittoons.
102 combs.
8 hair brushes.
2 chamois skins.
8 sponges.
10 silver brushes.
12 stove brushes.
4 scrub-brushes.
180 cakes toilet soap.
145 lbs. soap (scrubbing).
124 papers stove polish.
9 oil cans.
9 lamp scissors.
6 fire shovels.
70 copperas.
12 laundry bags.
19 mops.
1,392 lamp wicks.
36 wash-bowl plugs (rubber).

18 whisks.
9 plated drinking cups.
9 buckets.
18 brooms.
3 dust-pans.
4 feather dusters.
48 blankets (S. white).
66 blankets (S. red).
28 quilts (cotton-filled).
94 spreads (white).
24 spreads (B. & W).

1103 Invoice of equipment and operating material in car 1, January 1st, 1870.

24 blankets (double red).
24 mattresses.
46 mattress covers.
48 pillows (large).
100 sheets "
50 " (small).
146 pillow-cases (large).
4 pillow-cases (small).
20 roller towels.
50 hand towels.
10 S. R. curtains.
20 berth curtains.
26 window curtains.
2 rubber mats.
4 W. B. mats.
2 carpet-, vests.
2 floor carpets.
14 china spittoons.
2 iron spittoons.
2 combs.
2 hair brushes.
2 whisks.
4 plated drinking cups.
1 bucket.
1 broom.
1 dust-pan.
1 feather duster.
1 counter-duster.
1 sponge.
1 stove brush.
1 scrub-brush.
1 camp stool.
1 step-ladder.
1 monkey-wrench.
2 oil cans.
1 quilt (cotton-filled).
3 lamp hoods.

Invoice of equipment and operating material in car 2, January 1st, 1870.

48 blankets (S. red).
24 mattresses.
24 mattress covers.
48 pillows (large).
94 sheets "
150 pillow-cases (large).
24 roller towels.
20 berth curtains.
2 rubber mats.
2 W. B. mats.
1 saloon carpet.
1 floor carpet.
2 vest. carpets.
15 china spittoons.
2 combs.
2 hair brushes.
1 whisk.
1 broom.
1 counter-duster.
1 chamois skin.
1 sponge.
1 screw-driver.
1 monkey-wrench.
1 hatchet.
2 oil cans.
2 quilts (cotton-filled).
24 spreads (white).
1 mop.

Invoice of equipment and operating material in car 3, January 1st, 1870.

22 mattresses.
22 mattress covers.
46 pillows (large).
80 sheets "
100 pillow-cases (large).
14 roller towels.
2 W. B. mats.
1 aisle carpet.
1 floor carpet.
2 vest. carpets.
12 iron spittoons.
1 comb.
1 hair brush.
1 whisk.
1 broom.
1 counter-duster.
1 screw-driver.
1 monkey-wrench.
1 hatchet.
2 oil cans.
36 quilts (cotton-filled).
1 mop.
24 spreads (colored).

1104 Invoice of equipment and operating material in car 4, January 1st, 1870.

48 blankets (single red).
14 mattresses.
14 mattress covers.
48 pillows.
100 sheets (small).
100 pillow-cases (large).
30 roller towels.
4 W. B. mats.
2 carpets (vest.).
1 aisle carpet.
1 floor carpet.
12 china spittoons.
2 iron spittoons.
2 combs.
2 hair brushes.
1 nail brush.
2 whisks.
1 clothes brush.
1 broom.
1 feather duster.
1 chamois skin.
1 sponge.
1 monkey-wrench.
1 oil can.

Invoice of equipment and operating material in car 5, January 1st, 1870.

36 blankets.
24 mattresses.
46 mattress covers.
48 pillows (large).
150 sheets "
150 pillow-cases (large).
30 roller towels.
10 S. R. curtains.
20 berth curtains.
26 window curtains.
2 rubber mats.
2 W. B. mats.
2 floor carpets.
7 china spittoons.
2 iron spittoons.
2 combs.
2 hair brushes.
2 whisks.
4 plated drinking cups.
1 bucket.
1 broom.
1 dust-pan.
1 feather duster.
1 counter-duster.
1 stove brush.
1 scrub-brush.
1 camp stool.
1 step-ladder.
2 oil cans.
1 quilt (cotton-filled).
24 spreads (white).
3 lamp hoods.

Invoice of equipment and operating material in car 6, January 1st, 1870.

36 blankets (standard).
24 mattresses.
46 mattress covers.
49 pillows (small).
100 sheets "
100 pillow-cases (small).
25 roller towels.
10 S. R. curtains.
20 berth curtains.
26 window curtains.
2 W. B. mats.
1 floor carpet.
10 china spittoons.
2 iron spittoons.
2 combs.
2 hair brushes.
2 whisks.
2 plated drinking cups.
2 buckets.
1 broom.
1 dust-pan.
1 feather duster.
1 counter-duster.
1 chamois skin.
1 sponge.
1 stove brush.
1 scrub-brush.
1 camp stool.
1 step-ladder.
1 monkey-wrench.
2 oil cans.
24 spreads (white).

1105 Invoice of equipment and operating material in car 7, January 1st, 1870.

24 mattresses.
24 mattress covers.
48 pillows (small).
100 sheets (large).
100 pillow-cases (small).
30 roller towels.
2 W. B. mats.
2 carpets (vest.).
1 aisle carpet.
1 floor carpet.
12 china spittoons.
4 iron spittoons.
2 combs.
2 hair brushes.
2 nail brushes.
2 whisks.
1 clothes brush.
1 broom.
1 feather duster.
2 chamois skins.
1 sponge.
1 oil can.
48 quilts (cotton-filled).

Invoice of equipment and operating material in car 8, January 1st, 1870.

48 blankets (single red).
24 mattresses.
24 mattress covers.
43 pillows.
100 sheets.
100 pillow-cases.
30 roller towels.
4 W. B. mats.
2 carpets (vest.).
1 aisle carpet.
1 floor carpet.
12 china spittoons.
4 iron spittoons.
2 combs.
2 hair brushes.
1 nail brush.
1 clothes brush.
1 broom.
1 feather duster.
1 chamois skin.
1 sponge.
1 hatchet.
2 oil cans.

Invoice of equipment and operating material in car 9, January 1st, 1870.

24 mattresses.
24 mattress covers.
22 pillows (sponge, large).
26 pillows (feathers, large).
100 sheets (small).
100 pillow-cases (large).
25 roller towels.
16 berth curtains.
2 W. B. mats.
1 floor carpet.
8 iron spittoons.
2 combs.
2 whisks.
1 bucket.
1 broom.
1 dust-pan.
1 feather duster.
1 stove brush.
1 scrub-brush.
1 step-ladder.
2 oil cans.
17 quilts (cotton-filled).
14 quilts (bl'k't-filled).

Invoice of equipment and operating material in car 10, January 1st, 1870.

24 mattresses.
24 mattress covers.
44 pillows (small).
100 sheets.
100 pillow-cases (small).
30 roller towels.
2 W. B. mats.
2 vest. carpets.
1 floor carpet.
12 china spittoons.
2 iron spittoons.
2 combs.
2 hair brushes.
2 nail brushes.
2 whisks.
1 clothes brush.
1 broom.
1 dust-pan.
1 feather duster.
1 chamois skin.
2 oil cans.
48 quilts (cotton-filled).

1106 Invoice of equipment and operating material in car 11, January 1st, 1870.

10 blankets (S. red).
10 " (D. red).
20 mattresses.
20 mattress covers.
40 pillows (large).
56 sheets "
29 " (small).
85 pillow-cases (large).
25 roller towels.
16 berth curtains.
2 rubber mats.
1 carpet mat.
1 floor carpet.
2 vest. carpets.
10 china spittoons.
2 iron spittoons.
2 combs.
2 hair brushes.
2 whisks.
2 plated drinking cups.
1 bucket.
1 broom.
1 dust-pan.
1 feather duster.
1 counter-duster.
1 chamois skin.
1 sponge.
1 stove brush.
1 scrub-brush.
1 step-ladder.
1 monkey-wrench.
2 oil cans.
20 spreads (white).

Invoice of equipment and operating material in car 12, January 1st, 1873.

30 blankets (standard).
20 mattresses.
40 pillows (large).
85 sheets "
85 pillow-cases (large).
25 roller towels.
16 berth curtains.
2 rubber mats.
2 carpet mats.
1 floor carpet.
2 vest. carpets.
10 china spittoons.
2 iron spittoons.
2 combs.
2 hair brushes.
2 whisks.
2 plated drinking cups.
1 bucket.
1 broom.
1 dust-pan.
1 feather duster.
1 counter-duster.
1 chamois skin.
1 stove brush.
1 scrub-brush.
1 step-ladder.
2 oil cans.
20 spreads (white).

Invoice of equipment and operating material in car 13, January 1st, 1870.

24 blankets (standard).
12 mattresses (hair).
12 " (sponge).
24 mattress covers.
48 pillows (small).
75 sheets "
100 pillow-cases (small).
25 roller towels.
4 S. R. curtains.
16 berth curtains.
2 W. B. mats.
1 aisle carpet.
1 floor carpet.
12 china spittoons.
2 combs.
2 hair brushes.
1 whisk.
1 broom.
1 counter-duster.
1 sponge.
1 screw-driver.
1 hatchet.
2 oil cans.
24 quilts (C. F.).
12 spreads (B. & W.).
1 mop.

1107 Invoice of equipment and operating material in car 14, January 1st, 1870.

44 blankets (standard).
16 mattresses.
16 mattress covers.
48 pillows (small).
16 sheets (large).
57 " (small).
31 pillow-cases (large).
96 " " (small).
17 roller towels.
2 W. B. mats.
1 floor carpet.
9 iron spittoons.
2 combs.
2 hair brushes.
2 whisks.
1 bucket.
1 broom.
1 dust-pan.
1 feather duster.
1 chamois skin.
1 sponge.
1 scrub-brush.
8 single mattresses.
1 screw-driver.
1 gimlet.
1 oil can.
1 quilt (blanket-filled).
48 lamp wicks.

Invoice of equipment and operating material in car 15, January 1st, 1870.

24 mattresses.
24 mattress covers.
43 pillows (small).
101 sheets (large).
99 pillow-cases (small).
30 roller towels.
2 W. B. mats.
1 aisle carpet.
1 floor carpet.
12 iron spittoons.
1 comb.
2 hair brushes.
1 whisk.
1 broom.
1 counter-duster.
2 oil cans.
48 quilts (C. filled).
1 mop.

Invoice of equipment and operating material in car 16, January 1st, 1870.

24 mattresses (hair).
2 " (sponge).
24 mattress covers.
2 " "
16 pillows (hair).
27 " (large).
75 sheets (small).
133 pillow-cases (small).
10 roller towels.
12 hand towels.
2 W. B. mats.
1 aisle carpet.
1 floor carpet.
10 iron spittoons.
2 combs.
1 hair brush.
1 whisk.
1 broom.
1 counter-duster.
1 sponge.
42 quilts (C. filled).
1 mop.

Invoice of equipment and operating material in car 18, January 1st, 1870.

24 mattresses.
24 mattress covers.
44 pillows.
100 sheets.
100 pillow-cases.
28 roller towels.
4 W. B. mats.
1 carpet.
1 aisle carpet.
2 vest. carpets.
12 china spittoons.
4 iron spittoons.
1 comb.
2 hair brushes.
2 nail brushes.
2 whisks.
1 clothes brush.
1 broom.
1 dust-pan.
1 feather duster.
1 chamois skin.
1 sponge.
1 monkey-wrench.
1 oil can.
48 quilts (C. F.).

1108 Invoice of equipment and operating material in car 20, January 1st, 1870.

40 blankets (single red).
30 mattresses.
40 pillows.
100 sheets.
100 pillow-cases.
2 hair brushes.
1 nail brush.
2 whisks.
1 clothes brush.
1 broom.

30 roller towels.
4 W. B. mats.
1 carpet.
2 vest. carpets.
11 china spittoons.
2 combs.
1 dust-pan.
1 chamois skin.
1 sponge.
1 monkey-wrench.
1 oil can.
20 spreads (white).

Invoice of equipment and operating material in car 21, January 1st, 1870.

24 mattresses.
24 mattress covers.
44 pillows (small).
100 sheets "
100 pillow-cases (small).
30 roller towels.
4 W. B. mats.
2 vest. carpets.
1 floor carpet.
11 china spittoons.
2 iron spittoons.
2 combs.
1 hair brushes.
2 nail brushes.
2 whisks.
1 clothes brush.
1 broom.
1 feather duster.
1 chamois skin.
1 sponge.
2 oil cans.
48 quilts (C. F.).

Invoice of equipment and operating material in car 22, January 1st, 1870.

36 blankets (single red).
24 mattresses.
24 mattress covers.
44 pillows.
100 sheets.
100 pillow-cases.
30 roller towels.
4 W. B. mats.
13 china spittoons.
2 iron spittoons.
2 combs.
2 hair brushes.
1 nail brush.
1 clothes brush.
1 broom.
1 dust-pan.
1 feather duster.
1 chamois skin.
1 sponge.
2 oil cans.

Invoice of equipment and operating material in car 24, January 1st, 1870.

22 blankets (single white).
26 " (single red).
28 mattresses.
37 mattress covers.
48 pillows (small).
100 sheets "
100 pillow-cases (small).
25 roller towels.
20 berth curtains.
2 W. B. mats.
1 floor carpet.
12 iron spittoons.
2 combs.
2 hair brushes.
2 whisks.
1 bucket.
1 broom.
1 dust-pan.
1 feather duster.
1 counter-duster.
1 stove brush.
1 scrub-brush.
1 camp stool.
2 oil cans.

1109 Invoice of equipment and operating material in car 25, January 1st, 1870.

48 blankets (single red).
24 mattresses.
24 mattress covers.
48 pillows.
100 sheets (large).
100 pillow-cases (large).
30 roller towels.
2 W. B. mats.
1 floor carpet.
11 china spittoons.
4 iron spittoons.
2 combs.
2 hair brushes.
2 nail brushes.
2 whisks.
1 clothes brush.
1 broom.
1 feather duster.
1 chamois skin.
1 sponge.
1 screw-driver.
1 monkey-wrench.
2 oil cans.

Invoice of equipment and operating material in car 26, January 1st, 1870.

4 blankets (S. red).
24 mattresses.
24 mattress covers.
46 pillows (large).
95 sheets "
50 pillow-cases (large).
55 pillow-cases (small).
36 roller towels.
2 W. B. mats.
1 aisle carpet.
1 floor carpet.
2 vest. carpets.
12 iron spittoons.
1 comb.
1 hair brush.
1 whisk.
1 broom.
1 counter-duster.
1 screw-driver.
1 hammer.
2 oil cans.
38 quilts (C. F.).
4 coverlets (woolen).
1 mop.
24 spreads (pink).

Invoice of equipment and operating material in car 28, January 1st, 1870.

24 mattresses.
24 mattress covers.
48 pillows (small).
88 sheets (large).
68 pillow-cases (large).
47 pillow-cases (small).
24 roller towels.
2 W. B. mats.
1 aisle carpet.
1 floor carpet.
2 vest. carpets.
12 iron spittoons.
1 comb.
1 hair brush.
1 whisk.
1 broom.
1 counter-duster.
1 hammer.
2 oil cans.
36 quilts (bl'k't-filled).
24 spreads (white).

Invoice of equipment and operating material in car 29, January 1st, 1870.

24 blankets (standard).
12 mattresses (hair).
12 " (sponge).
24 mattress covers.
48 pillows (small).
75 sheets "
100 pillow-cases (small).
25 roller towels.
4 S. R. curtains.
16 berth curtains.
2 W. B. mats.
1 aisle carpet.
1 floor carpet.
12 china spittoons.
2 combs.
2 hair brushes.
1 whisk.
1 broom.
1 counter-duster.
1 chamois skin.
1 sponge.
1 screw-driver.
1 hatchet.
2 oil cans.
12 spreads (B. & W.).
24 quilts (C. F.).

1110 Invoice of equipment and operating material in car 30, January 1st, 1870.

36 blankets (S. red).
24 mattresses.
24 mattress covers.
48 pillows.
100 sheets.
100 pillow-cases.
30 roller towels.
4 W. B. mats.
2 carpets (vest.).
1 floor carpet.
12 china spittoons.
2 iron spittoons.
2 combs.
2 hair brushes.
2 nail brushes.
2 whisks.
1 clothes brush.
1 broom.
1 dust-pan.
1 feather duster.
1 chamois skin.
1 sponge.
1 monkey-wrench.
2 oil cans.

Invoice of equipment and operating material in car 31, January 1st, 1870.

24 mattresses.
24 mattress covers.
48 pillows (small).
70 sheets "
90 pillow-cases (small).
24 roller towels.
2 W. B. mats.
1 aisle carpet.
1 floor carpet.
2 vest. carpets.
13 iron spittoons.
1 comb.
1 hair brush.
1 whisk.
1 broom.
1 counter-duster.
1 screw-driver.
1 monkey-wrench.
2 oil cans.
24 spreads (pink).
1 mop.
1 quilt (B. F.).
46 quilts (C. F.).

Invoice of equipment and operating material in car 32, January 1st, 1870.

24 mattresses.
24 mattress covers.
46 pillows (small).
69 sheets "
71 pillow-cases (small).
20 roller towels.
2 W. B. mats.
1 aisle carpet.
1 floor carpet.
12 iron spittoons.
1 comb.
1 hair brush.
1 broom.
1 counter-duster.
2 oil cans.
27 quilts (B. F.).
17 quilts (C. F.).
Coverlets.
1 mop.

Invoice of equipment and operating material in car 33, January 1st, 1870.

24 mattresses.
24 mattress covers.
44 pillows (small).
100 sheets "
120 pillow-cases (small).
22 roller towels.
2 W. B. mats.
1 aisle carpet.
1 floor carpet.
2 vest. carpets.
10 iron spittoons.
2 combs.
2 hair brushes.
1 whisk.
2 brooms.
1 counter-duster.
1 screw-driver.
1 hatchet.
2 oil cans.
43 quilts (B. F.).
4 quilts (C. F.).
1 mop.

1111 Invoice of equipment and operating material in car 35, January 1st, 1870.

24 blankets (standard).
24 mattresses.
24 mattress covers.
48 pillows (large).
77 sheets "
91 pillow-cases (large).
15 roller towels.
2 W. B. mats.
1 aisle carpet.
1 floor carpet.
12 iron spittoons.
1 comb.
1 hair brush.
1 whisk.
1 counter-duster.
1 hatchet.
1 oil can.
24 blankets (S. red).
1 mop.
24 spreads (colored).

Invoice of equipment and operating material in car 36, January 1st, 1870.

24 blankets (standard).
24 mattresses.
24 mattress covers.
46 pillows (large).
100 sheets "
100 pillow-cases (large).
14 china spittoons.
2 combs.
2 hair brushes.
2 whisks.
1 broom.
1 counter-duster.

25 roller towels.
20 berth curtains.
2 rubber mats.
2 W. B. mats.
1 aisle carpet.
1 floor carpet.
2 vest. carpets.
1 chamois skin.
2 sponges.
2 camp stools.
1 screw-driver.
12 quilts (C. F.).
12 spreads (B. & W.).
1 mop.

Invoice of equipment and operating material in car 37, January 1st, 1870.

12 blankets (S. red).
32 mattresses.
32 mattress covers.
44 pillows (small).
50 sheets (large).
100 pillow-cases (small).
25 roller towels.
8 S. R. curtains.
16 berth curtains.
2 W. B. mats.
1 aisle carpet.
1 floor carpet.
2 best. carpets.
10 china spittoons.
2 iron spittoons.
2 combs.
2 hair brushes.
1 whisk.
1 broom.
1 sponge.
1 screw-driver.
36 quilts (C. F.).
1 mop.

Invoice of equipment and operating material in car 38, January 1st, 1870.

12 blankets (S. red).
24 " (standard).
24 mattresses.
46 mattress covers.
48 pillows (small).
150 sheets "
150 pillow-cases (small).
20 roller towels.
50 hand towels.
20 berth curtains.
1112 26 window curtains.
2 rubber mats.
2 W. B. mats.
1 carpet (aisle).
2 vest. carpets.
1 floor carpet.
2 carpet mats.
12 china spittoons.
2 combs.
2 hair brushes.
2 whisks.
4 plated drinking cups.
1 bucket.
1 broom.
1 dust-pan.
1 feather duster.
1 counter-duster.
1 sponge.
1 stove brush.
1 scrub-brush.
2 camp stools.
1 monkey-wrench.
2 oil cans.
1 quilt (C. F.).
1 mop.
3 lamp hoods.

Invoice of equipment and operating material in car 39, January 1st, 1870.

12 blankets (standard).
20 mattresses.
20 mattress covers.
40 pillows (large).
2 hair brushes.
1 whisk.
1 broom.
1 counter-duster.

50 sheets (small).
100 pillow-cases (large).
25 roller towels.
16 berth curtains.
2 W. B. mats.
1 floor carpet.
10 china spittoons.
2 combs.
1 chamois skin.
1 sponge.
1 screw-driver.
1 monkey-wrench.
1 hatchet.
2 oil cans.
20 quilts (C. F.).

Invoice of equipment and operating material in car 40, January 1st, 1870.

12 blankets (standard).
24 mattresses (sponge).
24 mattress covers.
47 pillows (small).
50 sheets "
100 pillow-cases (small).
25 roller towels.
16 berth curtains.
2 W. B. mats.
1 floor carpet.
12 china spittoons.
2 combs.
2 hair brushes.
1 whisk.
1 broom.
1 counter-duster.
1 chamois skin.
1 sponge.
1 camp stool.
1 screw-driver.
1 monkey-wrench.
1 hatchet.
2 oil cans.
24 quilts (C. F.).
1 mop.

Invoice of equipment and operating material in car 41, January 1st, 1870.

28 mattresses.
28 mattress covers.
47 pillows.
100 sheets.
100 pillow-cases.
30 roller towels.
2 W. B. mats.
2 carpets (vest.).
1 aisle carpet.
1 floor carpet.
11 china spittoons.
2 iron spittoons.
2 combs.
2 hair brushes.
2 nail brushes.
2 whisks.
1 clothes brush.
1 broom.
1 feather duster.
1 chamois skin.
1 sponge.
1 oil can.
48 coverlets (woolen).

1113 Invoice of equipment and operating material in car 42, January 1st, 1870.

24 blankets (standard).
22 mattresses.
22 mattress covers.
3 pillows (small).
48 pillows (large).
82 sheets "
95 pillow-cases (large).
1 comb.
1 hair brush.
1 whisk.
1 broom.
1 counter-duster.
1 screw-driver.
1 monkey-wrench.

14 roller towels.
2 W. B. mats.
1 aisle mat.
1 floor carpet.
11 iron spittoons.
1 oil can.
1 mop.
24 spreads (colored).
24 blankets (S. R.).

Invoice of equipment and operating material in car 43, January 1st, 1870.

12 blankets (S. red).
24 mattresses.
24 mattress covers.
44 pillows (small).
50 sheets "
100 pillow-cases (small).
25 roller towels.
4 S. R. curtains.
16 berth curtains.
2 W. B. mats.
1 floor carpet.
12 china spittoons.
2 combs.
2 hair brushes
1 whisk.
1 broom.
1 counter-duster.
1 sponge.
1 screw-driver.
2 oil cans.
36 quilts (C. F.).
12 spreads (B. & W.).

Invoice of equipment and operating material in car 44, January 1st, 1870.

12 blankets (S red).
24 mattresses.
24 mattress covers.
44 pillows (small).
50 sheets "
100 pillow-cases (small).
25 roller towels.
4 S. R. curtains.
16 berth curtains.
2 W. B. mats.
1 aisle carpet.
1 floor carpet.
12 china spittoons.
2 combs.
2 hair brushes.
1 whisk.
1 broom.
1 counter-duster.
1 sponge.
1 screw-driver.
2 oil cans.
1 mop.
36 quilts (C. F.).
12 spreads (B. & W.).

Invoice of equipment and operating material in car 45, January 1st, 1870.

12 blankets (S. red).
24 mattresses.
24 mattress covers.
44 pillows (small).
50 sheets "
100 pillow-cases (small).
25 roller towels.
4 S. R. curtains.
16 berth curtains.
2 W. B. mats.
1 floor carpet.
12 china spittoons.
2 combs.
2 hair brushes.
1 whisk.
1 broom.
1 counter-duster.
1 sponge.
1 screw-driver.
1 monkey-wrench.
2 oil cans.
1 mop.
24 quilts (C. F.).
12 spreads (B. & W.).

1114 Invoice of equipment and operating material in car 46, January 1st, 1870.

12 blankets (S. red).
24 mattresses.
24 mattress covers.
44 pillows (small).
50 sheets "
100 pillow-cases (small).
25 roller towels.
2 S. R. curtains.
20 berth curtains.
2 W. B. mats.
1 floor carpet.
12 china spittoons.
2 combs.
2 hair brushes.
1 whisk.
1 broom.
1 counter-duster.
1 screw-driver.
1 monkey-wrench.
2 oil cans.
24 quilts (C. F.).
12 spreads (B. & W.).
1 mop.

Invoice of equipment and operating material in car 47, January 1st, 1870.

22 mattresses.
22 mattress covers.
45 pillows (large).
100 sheets "
100 pillow-cases (large).
30 roller towels.
2 W. B. mats.
1 aisle carpet.
1 floor carpet.
2 vest. carpets.
12 china spittoons.
2 combs.
2 hair brushes.
2 whisks.
1 broom.
1 counter-duster.
1 chamois skin.
1 sponge.
2 oil cans.
48 quilts (C. F.).

Invoice of equipment and operating material in car 48, January 1st, 1870.

12 mattresses (sponge).
12 mattresses (hair).
24 mattress covers.
47 pillows (small).
97 sheets "
100 pillow-cases (small).
50 roller towels.
20 berth curtains.
2 rubber mats.
1 W. B. mat.
1 aisle carpet.
1 floor carpet.
10 china spittoons.
2 iron spittoons.
2 combs.
2 hair brushes.
2 whisks.
1 bucket.
1 broom.
1 dust-pan.
1 feather duster.
1 counter-duster.
1 stove brush.
1 scrub-brush.
1 step-ladder.
2 oil cans.
18 quilts (B. F.).
19 " (C. F.).

Invoice of equipment and operating material in car 49, January 1st, 1870.

24 mattresses.
24 mattress covers.
48 pillows (small).
4 iron spittoons.
2 combs.
2 hair brushes.

100 sheets (large).
100 pillow-cases (small).
30 roller towels.
2 W. B. mats.
2 carpets (vest.).
1 aisle carpet.
1 floor carpet.
12 china spittoons.
2 nail brushes.
2 whisks.
1 clothes brush.
1 broom.
1 feather duster.
1 chamois skin.
1 oil can.
48 quilts (C. F.).

1115 Invoice of equipment and operating material in car 50, January 1st, 1870.

24 mattresses.
24 mattress covers.
48 pillows.
102 sheets.
112 pillow-cases.
31 roller towels.
4 W. B. mats.
2 carpets (vest.).
1 floor carpet.
12 china spittoons.
2 iron spittoons.
2 combs.
2 hair brushes.
2 whisks.
1 clothes brush.
2 brooms.
1 feather duster.
1 chamois skin.
3 oil cans.
48 quilts (B. F.).

Invoice of equipment and operating material in car 51, January 1st, 1870.

36 blankets (S. red).
24 mattresses.
44 pillows (small).
100 sheets "
100 pillow-cases (small).
25 roller towels.
16 berth curtains.
2 rubber mats.
2 W. B. mats.
1 aisle carpet.
1 floor carpet.
2 vest. carpets.
12 iron spittoons.
2 combs.
2 hair brushes.
2 whisks.
1 bucket.
1 broom.
1 dust-pan.
1 feather duster.
1 counter-duster.
1 stove brush.
1 scrub-brush.
1 camp stool.
1 step-ladder.
2 oil cans.
24 spreads (white).

Invoice of equipment and operating material in car 52, January 1st, 1870.

24 blankets (S. R.).
24 mattresses.
48 pillows (large).
100 sheets (small).
100 pillow-cases (small).
25 roller towels.
16 berth curtains.
1 W. B. mat.
2 whisks.
1 bucket.
1 broom.
1 dust-pan.
1 feather duster.
1 counter-duster.
1 sponge.
1 stove brush.

2 vest. carpets.
1 floor carpet.
14 iron spittoons.
2 combs.
2 hair brushes.
1 scrub-brush.
1 step-ladder.
2 oil cans.
24 spreads (white).

Invoice of equipment and operating material in car 53, January 1st, 1870.

12 blankets (S. R.).
32 mattresses.
32 mattress covers.
46 pillows (small).
50 sheets (large).
100 pillow-cases (small).
25 roller towels.
8 S. R. curtains.
16 berth curtains.
2 W. B. mats.
1 floor carpet.
12 china spittoons.
2 combs.
2 hair brushes.
1 whisk.
1 broom.
1 sponge.
1 screw-driver.
36 quilts (C. F.)

1116 Invoice of equipment and operating material in car 55, January 1st, 1870.

44 blankets (std.).
24 mattresses.
16 mattress covers.
46 pillows (small).
49 sheets (large).
59 " (small).
6 pillow-cases (large).
108 " " (small).
20 roller towels.
4 W. B. mats.
1 aisle carpet.
1 floor carpet.
12 iron spittoons.
2 combs.
2 hair brushes.
2 whisks.
1 bucket.
1 broom.
1 dust-pan.
1 feather duster.
1 chamois skin.
1 sponge.
1 cake toilet soap.
1 screw-driver.
1 gimlet.
2 oil cans.
1 quilt (B. F.).
36 lamp wicks.

Invoice of equipment and operating material in car 56, January 1st, 1870.

24 mattresses.
24 mattress covers.
48 pillows (small).
100 sheets "
100 pillow-cases (small).
30 roller towels.
4 W. B. mats.
2 carpets (vest.).
1 aisle carpet.
1 floor carpet.
12 china spittoons.
2 iron spittoons.
2 combs.
2 hair brushes.
1 nail brush.
2 whisks.
1 clothes brush.
1 broom.
1 feather duster.
1 sponge.
1 monkey-wrench.
1 oil can.
48 quilts (C. F.).

Invoice of equipment and operating material in car 57, January 1st, 1870.

24 mattresses.
16 mattress covers.
48 pillows (small).
55 sheets (large).
8 sheets (small).
3 pillow-cases (large).
89 " " (small).
18 hand towels.
2 W. B. mats.
1 floor carpet.
10 iron spittoons.
2 combs.
2 hair brushes.
2 whisks.
1 bucket.
1 broom.
1 dust-pan.
1 feather duster.
1 chamois skin.
1 sponge.
1 scrub-brush.
1 screw-driver.
1 gimlet.
1 oil can.
16 quilts (B. F.).
18 " (C. F.).
2 coverlets (woolen).
48 lamp wicks.

Invoice of equipment and operating material in car 58, January 1st, 1870.

24 mattresses.
24 mattress covers.
48 pillows (small).
100 sheets (large).
100 pillow-cases (small).
1117 30 roller towels.
2 W. B. mats.
1 aisle carpet.
1 floor carpet.
2 vest. carpets.
12 china spittoons.
4 iron spittoons.
2 combs.
2 hair brushes.
1 nail brush.
2 whisks.
1 clothes brush.
1 bucket.
1 broom.
1 counter-duster.
1 chamois skin.
1 sponge.
1 monkey-wrench.
2 oil cans.
1 coal hod.
1 fire shovel.
1 fire poker.
48 quilts (C. F.).

Invoice of equipment and operating material in car 59, January 1st, 1870.

20 mattresses.
20 mattress covers.
40 pillows (small).
98 sheets "
161 pillow-cases (small).
30 roller towels.
12 hand towels.
4 W. B. mats.
1 aisle carpet.
1 floor "
2 vest. "
10 china spittoons.
3 iron spittoons.
1 comb.
1 hair brush.
1 whisk.
1 broom.
1 counter-duster.
1 screw-driver.
1 monkey-wrench.
1 hatchet.
2 oil cans.
17 quilts (B. F.).
18 " (C. F.).
1 mop.
20 spreads (colored).

Invoice of equipment and operating material in car 60, January 1st, 1870.

22 mattresses.
22 mattress covers.
44 pillows (small).
112 sheets (large).
183 pillow-cases (small).
38 roller towels.
2 W. B. mats.
1 aisle carpet.
1 floor carpet.
2 vest. carpets.
11 china spittoons.
3 iron spittoons.
2 combs.
1 hair brush.
1 broom.
1 counter-duster.
1 screw-driver.
1 monkey-wrench.
1 hatchet.
1 oil can.
33 quilts (B. filled).
1 mop.
23 spreads (colored).

Invoice of equipment and operating material in car 61, January 1st, 1870.

24 mattresses.
24 mattress covers.
48 pillows (small).
93 sheets "
123 pillow-cases (small).
30 roller towels.
2 W. B. mats.
1 aisle carpet.
1 floor carpet.
2 vestibule carpets.
12 iron spittoons.
1 comb.
1 hair brush.
1 whisk.
1 broom.
1 counter-duster.
1 sponge.
1 screw-driver.
1 monkey-wrench.
1 oil can.
48 quilts (cotton-filled).
24 spreads (pink).

1118 Invoice of equipment and operating material in car 62, January 1st, 1870.

24 mattresses.
24 mattress covers.
48 pillows (small).
2 W. B. mats.
1 aisle carpet.
8 iron spittoons.
2 oil cans.
48 quilts (cotton-filled).
24 spreads (colored).

Invoice of equipment and operating material in car 63, January 1st, 1870.

12 blankets (S. red).
36 mattresses.
36 mattress covers.
48 pillows (small).
50 sheets "
100 pillow-cases (small).
25 roller towels.
8 S. R. curtains.
16 berth curtains.
2 W. B. mats.
1 floor carpet.
2 vestibule carpets.
12 iron spittoons.
2 combs.
2 hair brushes.
1 whisk.
1 broom.
1 counter-duster.
1 sponge.
1 screw-driver.
1 monkey-wrench.
2 oil cans.
24 quilts (C. F.).
15 spreads (B. & W.).

Invoice of equipment and operating material in car 66, January 1st, 1870.

28 mattresses.
48 pillows (small).
100 sheets (large).
100 pillow-cases (small).
30 roller towels.
4 W. B. mats.
2 carpets (vestibule).
9 china spittoons.
2 iron spittoons.
2 combs.
2 hair brushes.
2 nail brushes.
2 whisks.
1 clothes brush.
1 broom.
1 dust-pan.
1 feather duster.
2 sponges.
1 monkey-wrench.
2 oil cans.
47 quilts (cotton-filled).

Invoice of equipment and operating material in car 67, January 1st, 1870.

36 blankets (standard).
24 mattresses (sponge).
24 mattress covers.
46 pillows (large).
100 sheets "
150 pillow-cases (large).
20 roller towels.
30 hand towels.
20 berth curtains.
2 rubber mats.
2 W. B. mats.
2 saloon carpets.
1 floor carpet.
2 vestibule carpets.
14 china spittoons.
2 combs.
2 hair brushes.
2 whisks.
1 broom.
1 counter-duster.
1 chamois skin.
1 sponge.
1 camp stool.
1 screw-driver.
1 monkey-wrench.
1 hatchet.
2 oil cans.
2 quilts (C. filled).
1 mop.

1119 Invoice of equipment and operating material in car 68, January 1st, 1870.

36 blankets (S. red).
24 mattresses.
35 mattress covers.
6 pillows (hair).
38 pillows (feathers).
100 sheets (small).
100 pillow-cases (small).
25 roller towels.
116 berth curtains.
1 rubber mat.
2 W. B. mats.
1 aisle carpet.
1 floor carpet.
11 iron spittoons.
2 combs.
2 hair brushes.
2 whisks.
1 bucket.
1 broom.
1 dust-pan.
1 feather duster.
1 counter-duster.
1 stove brush.
1 scrub-brush.
1 step-ladder.
2 oil cans.
24 spreads (white).

Invoice of equipment and operating material in car 69, January 1st, 1870.

36 blankets (standard).
24 mattresses.
46 mattress covers.
48 pillows.
150 sheets (large).
150 pillow-cases (large).
20 roller towels.
50 hand towels.
10 S. R. curtains.
20 berth curtains.
26 window curtains.
2 rubber mats.
2 W. B. mats.
2 carpet mats.
2 vestibule carpets.
1 floor carpet.
14 china spittoons.
2 combs.
2 hair brushes.
2 whisks.
4 plated drinking cups.
1 bucket.
1 broom.
1 dust-pan.
1 feather duster.
1 counter-duster.
2 chamois skins.
1 sponge.
1 stove brush.
1 scrub-brush.
1 step-ladder.
1 monkey-wrench.
2 oil cans.
24 spreads (white).
3 lamp hoods.

Invoice of equipment and operating material in car 70, January 1st, 1870.

36 blankets (standard).
24 mattresses.
45 mattress covers.
48 pillows (large).
53 sheets (large).
51 " (small).
97 pillow-cases (large).
20 roller towels.
4 hand towels.
20 berth curtains.
26 window curtains.
1 rubber mat.
4 W. B. mats.
2 floor carpets.
2 vestibule carpets.
10 china spittoons.
2 iron spittoons.
2 combs.
2 hair brushes.
2 whisks.
4 plated drinking cups.
1 bucket.
1 broom.
1 dust-pan.
1 feather duster.
1 counter-duster.
1 sponge.
1 stove brush.
1 scrub-brush.
1 camp stool.
1 step-ladder.
1 monkey-wrench.
1 oil can.
1 mop.
3 lamps (hoods).

1120 Invoice of equipment and operating material in car 71, January 1st, 1870.

24 blankets (S. red).
24 " (standard).
24 mattresses.
46 mattress covers.
47 pillows (large).
2 combs.
2 hair brushes.
2 whisks.
2 plated drinking cups.
1 bucket.

132 sheets (large).
18 " (small).
150 pillow-cases (small).
20 roller towels.
50 hand towels.
10 berth curtains.
26 window curtains.
1 rubber mat.
4 W. B. mats.
2 vestibule carpets.
1 floor carpet.
12 china spittoons.
1 broom.
1 dust-pan.
1 feather duster.
1 counter-duster.
1 stove brush.
1 scrub-brush.
1 step-ladder.
1 monkey-wrench.
2 oil cans.
24 spreads (white).
3 lamp hoods.

Invoice of equipment and operating material in car 72, January 1st, 1870.

36 blankets (standard).
24 mattresses.
46 mattress covers.
46 pillows (large).
150 sheets (large).
150 pillow-cases (large).
20 roller towels.
50 hand towels.
20 berth curtains.
2 rubber mats.
2 W. B. mats.
1 floor carpet.
2 vestibule carpets.
14 china spittoons.
2 combs.
2 hair brushes.
2 whisks.
4 plated drinking cups.
1 bucket.
1 broom.
1 dust-pan.
1 feather duster.
2 counter-dusters.
2 chamois skins.
2 sponges.
1 stove brush.
1 scrub-brush.
1 camp stool.
1 step-ladder.
1 monkey-wrench.
3 oil cans.
24 spreads (white).
1 mop.
3 lamp hoods.

Invoice of equipment and operating material in car 73, January 1st, 1870.

24 mattresses.
44 mattress covers.
48 pillows (small).
100 sheets (small).
100 pillow-cases (small).
30 roller towels.
16 berth curtains.
2 rubber mats.
2 W. B. mats.
1 floor carpet.
2 vestibule carpets.
12 iron spittoons.
2 combs.
2 hair brushes.
2 whisks.
1 bucket.
1 broom.
1 dust-pan.
1 feather duster.
1 counter-duster.
1 chamois skin.
1 sponge.
1 stove brush.
1 scrub-brush.
1 step-ladder.
1 monkey-wrench.
2 oil cans.
29 quilts (B. F.).
7 quilts (C. F.).
3 lamp hoods.

1121 Invoice of equipment and operating material in car 75, January 1st, 1870.

36 blankets (standard).
24 mattresses.
46 mattress covers.
46 pillows (small).
150 sheets (small).
150 pillow-cases (small).
20 roller towels.
50 hand towels.
10 S. R. curtains.
20 berth curtains.
26 window curtains.
2 rubber mats.
2 W. B. mats.
2 vestibule carpets.
2 floor carpets.
14 china spittoons.
4 combs.
4 hair brushes.
2 whisks.
4 plated drinking cups.
2 buckets.
1 broom.
1 dust-pan.
1 feather duster.
1 counter-duster.
2 chamois skins.
1 sponge.
2 stove brushes.
1 scrub-brush.
1 step-ladder.
1 monkey-wrench.
2 oil cans.
24 spreads (white).
3 lamp hoods.

Invoice of equipment and operating material in car 76, January 1st, 1870.

36 blankets (standard).
24 mattress covers.
48 pillows (large).
150 sheets (large).
150 pillow-cases (large).
20 roller towels.
50 hand towels.
10 S. R. curtains.
20 berth curtains.
28 window curtains.
2 rubber mats.
2 W. B. mats.
4 vestibule carpets.
2 floor carpets.
14 china spittoons.
2 combs.
2 hair brushes.
2 whisks.
4 plated drinking cups.
1 bucket.
1 broom.
1 dust-pan.
1 feather duster.
1 counter-duster.
1 chamois skin.
1 sponge.
1 stove brush.
1 scrub-brush.
1 camp stool.
1 step-ladder.
1 screw-driver.
1 monkey-wrench.
1 hatchet.
2 oil cans.
3 lamp hoods.
1 quilt (bl'k't-filled).
2 quilts (cotton-filled).
24 spreads (white).
2 mattresses (sponge).
10 mattresses (spring).

Invoice of equipment and operating material in car 77, January 1st, 1870.

36 blankets (standard).
24 mattresses (hair).
1 mattress (spring).
32 pillows (large).
150 sheets "
2 whisks.
2 plated drinking cups.
1 bucket.
1 broom.
1 feather duster.

150 pillow-cases (large).
20 roller towels.
50 hand towels.
24 S. R. curtains.
10 window curtains.
2 rubber mats.
1122 2 W. B. mats.
1 floor carpet.
2 vestibule carpets.
8 china spittoons.
2 combs.
2 hair brushes.
1 counter-duster.
1 chamois skin.
1 sponge.
1 stove brush.
1 scrub-brush.
1 camp stool.
1 step-ladder.
2 oil cans.
24 spreads (white).
1 mop.
5 lamp hoods.

Invoice of equipment and operating material in car 78, January 1st, 1870.

46 blankets (S. red).
23 mattresses (hair).
1 mattress (spring).
32 pillows (feathers).
150 sheets (large).
150 pillow-cases (large).
20 roller towels.
50 hand towels.
23 S. R. curtains.
10 window curtains.
2 rubber mats.
2 W. B. mats.
1 floor carpet.
2 vest.
8 china spittoons.
2 combs.
2 hair brushes.
2 whisks.
2 plated drinking cups.
1 bucket.
1 broom.
1 feather duster.
1 counter-duster.
1 chamois skin.
1 sponge.
1 stove brush.
1 scrub-brush.
1 camp stool.
1 step-ladder.
2 oil cans.
24 spreads (white).
1 mop.
5 lamp hoods.

Invoice of equipment and operating material in car 79, January 1st, 1870.

24 mattresses.
46 mattress covers.
48 pillows (large).
24 quilts (cotton-filled).

Invoice of equipment and operating material in car 80, January 1st, 1870.

48 blankets (S. red).
24 mattresses.
46 mattress covers.
48 pillows (large).
88 sheets (large).
12 sheets (small).
100 pillow-cases.
25 roller towels.
20 berth curtains.
2 hair brushes.
2 whisks.
1 bucket.
1 broom.
1 dust-pan.
1 feather duster.
1 counter-duster.
1 chamois skin.
1 sponge.

2 W. B. mats.
1 aisle carpet.
2 floor carpets.
11 iron spittoons.
2 combs.
1 stove brush.
1 scrub-brush.
1 step-ladder.
2 oil cans.
1 mop.

Invoice of equipment and operating material in car 81, January 1st, 1870.

24 blankets (S. red).
22 mattresses.
22 mattress covers.
48 pillows (large).
4 W. B. mats.
1 aisle carpet.
1 floor carpet.
2 vest. "
12 silver spittoons.
2 iron spittoons.
12 coverlets (woolen).
24 spreads (white).

1123 Invoice of equipment and operating material in car 82, January 1st, 1870.

24 blankets (standard).
22 mattresses.
22 mattress covers.
48 pillows.
10 sheets (large).
4 W. B. mats.
1 aisle carpet.
1 floor carpet.
2 vest. carpets.
2 iron spittoons.
12 silver-plated spittoons.
2 combs.
1 hatchet.
2 oil cans.
24 blankets (S. white).
24 spreads (colored).

Invoice of equipment and operating material in car 83, January 1st, 1870.

24 blankets (S. red).
24 mattresses.
24 mattress covers.
46 pillows (large).
100 sheets (large).
85 pillow-cases (large).
25 roller towels.
2 W. B. mats.
1 aisle carpet.
1 floor carpet.
2 vest. "
2 iron spittoons.
11 silver-plated spittoons.
2 combs.
2 hair brushes.
1 whisk.
1 broom.
1 counter-duster.
1 chamois skin.
1 sponge.
1 camp stool.
1 screw-driver.
1 monkey-wrench.
1 hatchet.
2 oil cans.
24 blankets (standard).
4 quilts (C. filled).
1 mop.
24 spreads (B. & W.).

Invoice of equipment and operating material in car 84, January 1st, 1870.

24 blankets (standard).
24 mattresses.
24 mattress covers.
12 silver-plated spittoons.
2 combs.
2 hair brushes.

46 pillows (large).
100 sheets (large).
150 pillow-cases (large).
25 roller towels.
4 W. B. mats.
1 aisle carpet.
1 floor carpet.
2 vest. "
2 iron spittoons.
1 broom.
1 counter-duster.
1 chamois skin.
1 sponge.
1 hatchet.
2 oil cans.
24 blankets (S. red).
1 mop.
24 spreads (colored).

Invoice of equipment and operating material in car 85, January 1st, 1870.

48 blankets (standard).
24 mattresses (sponge).
2 " (hair).
46 mattress covers.
24 pillows (large, sponge).
24 pillows " feathers.
150 sheets (large).
150 pillow-cases (large).
20 roller towels.
1124 50 hand towels.
20 berth curtains.
2 rubber mats.
4 W. B. mats.
1 floor carpet.
4 vest. "
14 china spittoons.
2 combs.
2 hair brushes.
2 whisks.
2 plated drinking cups.
2 buckets.
1 broom.
1 dust-pan.
1 feather duster.
1 counter-duster.
1 chamois skin.
1 stove brush.
1 scrub-brush.
1 camp stool.
1 step-ladder.
1 screw-driver.
1 monkey-wrench.
1 hatchet.
2 oil cans.
24 spreads (white).
3 lamp hoods.

Invoice of equipment and operating material in car 86, January 1st, 1870.

48 blankets (standard).
24 mattresses (sponge).
46 mattress covers.
48 pillows (large, sponge).
120 sheets (large).
30 " (small).
150 pillow-cases (large).
20 roller towels.
50 hand towels.
20 berth curtains.
2 W. B. mats.
4 carpet mats.
1 aisle carpet.
1 floor carpet.
4 vest. "
14 china spittoons.
2 combs.
2 hair brushes.
2 whisks.
2 plated drinking cups.
1 bucket.
1 broom.
1 dust-pan.
1 feather duster.
1 counter-duster.
2 chamois skins.
2 sponges.
1 stove brush.
1 scrub-brush.
1 camp stool.
1 step-ladder.
1 screw-driver.
1 monkey-wrench.
2 oil cans.
24 spreads (white).
3 lamp hoods.

Invoice of equipment and operating material in car 87, January 1st, 1870.

46 blankets (std., S. S.)
24 mattresses.
24 mattress covers.
44 pillows (large).
110 sheets (large).
125 pillow-cases (large).
9 roller towels.
62 hand towels.
2 rubber mats.
2 W. B. mats.
2 carpets (vestibule).
1 aisle carpet.
1 floor carpet.
13 china spittoons.
2 combs.
2 hair brushes.
1 whisk.
1 bucket.
2 brooms.
1 feather duster.
1 counter-duster.
1 chamois skin.
1 sponge.
1 silver brush.
1 screw-driver.
1 monkey-wrench.
1 hatchet.
2 oil cans.
24 spreads (white).
1 mop.

Invoice of equipment and operating material in car 88, January 1st, 1870.

46 blankets (standard).
24 mattresses.
24 mattress covers.
46 pillows (large).
117 sheets (large).
115 pillow-cases (large).
1125 13 roller towels.
44 hand towels.
2 rubber mats.
2 W. B. mats.
2 carpets (vestibule).
1 aisle carpet.
1 floor carpet.
12 china spittoons.
2 combs.
2 hair brushes.
1 whisk.
1 bucket.
2 brooms.
1 feather duster.
2 chamois skins.
1 sponge.
1 silver brush.
1 screw-driver.
1 monkey-wrench.
1 hatchet.
2 oil cans.
24 spreads (white).
1 mop.

Invoice of equipment and operating material in car 89, January 1st, 1870.

46 blankets (standard).
24 mattresses.
24 mattress covers.
46 pillows (large).
110 sheets (large).
153 pillow-cases (large).
15 roller towels.
71 hand towels.
2 rubber mats.
2 W. B. mats.
2 carpets (vestibule).
2 hair brushes.
1 bucket.
1 broom.
1 feather duster.
1 counter-duster.
1 chamois skin.
1 sponge.
1 silver brush.
1 camp stool.
1 screw-driver.
1 monkey-wrench.

1 aisle carpet.
1 floor carpet.
14 china spittoons.
2 combs.
1 hatchet.
2 oil cans.
24 spreads (white).
1 mop.

Invoice of equipment and operating material in car 90, January 1st, 1870.

46 blankets (standard).
24 mattresses.
24 mattress covers.
48 pillows (large).
100 sheets (large).
150 pillow-cases (large).
12 roller towels.
65 hand towels.
2 rubber mats.
2 W. B. mats.
2 carpets (vestibule).
1 aisle carpet.
1 floor carpet.
14 china spittoons.
2 combs.
2 hair brushes.
1 whisk.
1 bucket.
1 broom.
1 feather duster.
1 chamois skin.
1 sponge.
1 silver brush.
1 screw-driver.
1 monkey-wrench.
1 hatchet.
2 oil cans.
24 spreads (white).
1 mop.

Invoice of equipment and operating material in car 91, January 1st, 1870.

46 blankets (standard).
24 mattresses.
24 mattress covers.
46 pillows (large).
125 sheets (large).
200 pillow-cases (large).
30 roller towels.
2 rubber mats.
1126 2 W. B. mats.
2 carpets (vestibule).
1 floor carpet.
16 china spittoons.
2 combs.
2 hair brushes.
1 whisk.
1 bucket.
1 broom.
1 feather duster.
1 chamois skin.
1 sponge.
1 silver brush.
1 camp stool.
1 screw-driver.
1 monkey-wrench.
1 hatchet.
2 oil cans.
24 spreads (white).
1 mop.

Invoice of equipment and operating material in car 92, January 1st, 1870.

46 blankets (standard).
24 mattresses.
24 mattress covers.
46 pillows (large).
9 sheets (small).
115 sheets (large).
11 pillow-cases (small).
2 hair brushes.
2 whisks.
1 bucket.
2 brooms.
1 feather duster.
1 chamois skin.
1 sponge.

189 pillow-cases (large).
24 roller towels.
2 rubber mats.
2 W. B. mats.
2 carpets (vestibule).
1 floor carpet.
14 china spittoons.
2 combs.
1 silver brush.
1 screw-driver.
1 monkey-wrench.
1 hatchet.
2 oil cans.
24 spreads (white).
1 mop.

Invoice of equipment and operating material in car 93, January 1st, 1870.

48 blankets (standard).
24 mattresses.
24 mattress covers.
46 pillows (large).
100 sheets (large).
150 pillow-cases (large).
25 roller towels.
2 rubber mats.
2 W. B. mats.
2 saloon carpets.
1 floor carpet.
2 vestibule carpets.
14 china spittoons.
2 combs.
2 hair brushes.
2 whisks.
1 broom.
1 counter-duster.
1 chamois skin.
1 sponge.
1 screw-driver.
1 monkey-wrench.
1 hatchet.
2 oil cans.
2 quilts (C. filled).
24 spreads (white).
1 mop.

Invoice of equipment and operating material in car 94, January 1st, 1870.

48 blankets (standard).
24 mattresses.
24 mattress covers.
46 pillows (large).
100 sheets (large).
150 pillow-cases (large).
25 roller towels.
20 center curtains.
2 rubber mats.
2 W. B. mats.
2 saloon carpets.
1 floor carpet.
2 vest. "
14 china spittoons.
2 combs.
2 hair brushes.
1 whisk.
1 broom.
1 counter-duster.
1 chamois skin.
1 sponge.
1 screw-driver.
1 monkey-wrench.
1 hatchet.
2 oil cans.
2 quilts (B. filled).
24 spreads (white).
1 mop.

1127 Invoice of equipment and operating material in car 95, January 1st, 1870.

24 blankets (standard).
24 mattresses.
24 mattress covers.
46 pillows (large).
2 combs.
2 hair brushes.
2 whisks.
1 broom.

100 sheets (large).
134 pillow-cases (large).
13 roller towels.
72 hand towels.
20 berth curtains.
2 rubber mats.
2 W. B. mats.
1 aisle carpet.
1 floor carpet.
2 vest. carpets.
10 china spittoons.
1 counter-duster.
1 chamois skin.
1 sponge.
1 screw-driver.
1 monkey-wrench.
1 hatchet.
2 oil cans.
24 blankets (S. red).
2 quilts (C. filled).
24 spreads (white).

Invoice of equipment and operating material in car 96, January 1st, 1870.

48 blankets (standard).
24 mattresses.
24 mattress covers.
46 pillows (large).
100 sheets (large).
150 pillow-cases (large).
20 roller towels.
50 hand towels.
20 berth curtains.
2 rubber mats.
2 W. B. mats.
1 floor carpet.
2 vest. "
14 china spittoons.
2 combs.
2 hair brushes.
1 whisk.
1 broom.
2 counter-dusters.
1 chamois skin.
2 sponges.
1 screw-driver.
1 monkey-wrench.
2 oil cans.
2 quilts (C. F.).
12 spreads (white).
12 spreads (B. & W.).
1 mop.

Invoice of equipment and operating material in car 97, January 1st, 1870.

36 blankets (std.).
24 mattresses.
46 pillows (large).
150 sheets "
150 pillow-cases (large).
20 roller towels.
50 hand towels.
20 berth curtains.
1 rubber mat.
2 W. B. mats.
2 carpet mats.
1 floor carpet.
2 vest. "
14 china spittoons.
2 combs.
2 hair brushes.
2 whisks.
3 plated drinking cups.
1 bucket.
1 broom.
1 dust-pan.
1 feather duster.
1 counter-duster.
1 chamois skin.
1 sponge.
1 stove brush.
1 scrub-brush.
2 camp stools.
1 step-ladder.
1 screw-driver.
1 monkey-wrench.
1 hatchet.
2 oil cans.
24 spreads (B. & W.).
47 seat covers.

1128 Invoice of equipment and operating material in car 99, January 1st, 1870.

52 blankets (S. red).
26 mattresses.
26 mattress covers.
44 pillows (large).
100 sheets (small).
100 pillow-cases (large).
30 roller towels.
3 W. B. mats.
2 carpets (vest.).
1 floor carpet.
12 china spittoons.
2 iron spittoons.
2 combs.
2 hair brushes.
2 whisks.
1 broom.
1 feather duster.
1 chamois skin.
1 sponge.
2 oil cans.

Invoice of equipment and operating material in car 101, January 1st, 1870.

24 mattresses.
24 mattress covers.
43 pillows (small).
83 sheets "
99 pillow-cases (small).
17 roller towels.
4 W. B. mats.
2 carpets (vest.).
1 floor carpet.
12 iron spittoons.
1 comb.
1 hair brush.
1 whisk.
1 broom.
1 counter-duster.
1 screw-driver.
1 hammer.
2 oil cans.
48 quilts (C. F.).
24 spreads (B. & W.).
1 mop.

Invoice of equipment and operating material in car 102, January 1st, 1870.

24 mattresses.
24 mattress covers.
48 pillows (small).
102 sheets (small).
100 pillow-cases (small).
30 roller towles.
4 W. B. mats.
2 carpets (vest.).
1 aisle carpet.
1 floor carpet.
12 china spittoons.
2 iron spittoons.
2 combs.
2 hair brushes.
1 nail brush.
2 whisks.
1 clothes brush.
1 broom.
1 feather duster.
1 chamois skin.
1 sponge.
1 oil can.
48 quilts (C. F.).

Invoice of equipment and operating material in car 103, January 1st, 1870.

48 blankets (std.).
24 mattresses (sponge).
24 mattress covers.
46 pillows (large).
100 sheets "
14 china spittoons.
2 combs.
2 hair brushes.
1 whisk.
1 broom.

100 pillow-cases (large).
25 roller towels.
20 berth curtains.
2 rubber mats.
2 W. B. mats.
1 floor carpet.
2 vest. "
1 counter-duster.
2 sponges.
2 camp stools.
1 screw-driver.
2 quilts (C. F.).
12 spreads.
1 mop.

1129 Invoice of equipment and operating material in car 104, January 1st, 1870.

48 blankets (std.).
26 mattresses (sponge).
26 mattress covers.
48 pillows (large).
100 sheets "
150 pillow-cases (large).
20 roller towels.
72 hand towels.
20 berth curtains.
2 rubber mats.
4 W. B. mats.
1 floor carpet.
2 vest. "
14 china spittoons.
2 combs.
2 hair brushes.
2 whisks.
1 broom.
1 counter-duster.
1 chamois skin.
2 sponges.
1 screw-driver.
1 monkey-wrench.
1 hatchet.
2 oil cans.
2 quilts (C. F.).
24 spreads (B. & W.).
1 mop.

Invoice of equipment and operating material in car 105, January 1st, 1870.

48 blankets (std.).
26 mattresses (sponge).
26 mattress covers (sponge).
48 pillows (large).
100 sheets "
150 pillow-cases (large).
20 roller towels.
50 hand towels.
20 berth curtains.
2 rubber mats.
4 W. B. mats.
1 floor carpet.
2 vest. carpets.
14 china spittoons.
2 combs.
2 hair brushes.
2 whisks.
1 broom.
1 counter-duster.
1 chamois skin.
3 sponges.
1 screw-driver.
1 monkey-wrench.
1 hatchet.
2 oil cans.
2 quilts (C. F.).
24 spreads (B. & W.).
1 mop.

Invoice of equipment and operating material in car 106, January 1st, 1870.

24 blankets (std.).
24 mattresses (sponge).
36 mattress covers.
47 pillows (large).
100 sheets (small).
2 plated drinking cups.
1 bucket.
1 broom.
1 dust-pan.
1 feather duster.

100 pillow-cases (large).
25 roller towels.
20 berth curtains.
2 rubber mats.
2 W. B. mats.
2 vest. carpets.
1 floor carpet.
14 china spittoons
2 combs.
2 hair brushes.
2 whisks.
1 counter-duster.
1 chamois skin.
1 sponge.
1 stove brush.
1 scrub-brush.
1 step-ladder.
1 monkey-wrench.
2 oil cans.
24 spreads (white).
1 mop.

1130 Invoice of equipment and operating material in car 107, January 1st, 1870.

24 blankets (std.).
24 mattresses (sponge).
36 mattress covers.
46 pillows (large).
100 sheets "
100 pillow-cases (large).
25 roller towels.
20 berth curtains.
2 rubber mats.
2 W. B. mats.
2 vest. carpets.
1 floor carpet.
14 china spittoons.
2 combs.
2 hair brushes.
2 whisks.
2 plated drinking cups.
1 bucket.
1 broom.
1 dust-pan.
1 feather duster.
1 counter-duster.
1 chamois skin.
1 sponge.
1 step-ladder.
1 oil can.
24 spreads (white).
1 mop.

Invoice of equipment and operating material in car 108, January 1st, 1870.

24 blankets (std.).
24 mattresses.
24 mattress covers.
46 pillows (large).
100 sheets "
150 pillow-cases (large).
25 roller towels.
20 berth curtains.
2 W. B. mats.
1 aisle carpet.
1 floor carpet.
2 vest. "
2 iron spittoons.
12 silver-plated spittoons.
2 combs.
2 hair brushes.
1 broom.
1 counter-duster.
1 chamois skin.
1 sponge.
1 monkey-wrench.
1 hatchet.
1 hammer.
2 oil cans.
24 blankets (S. white).
1 mop.

Invoice of equipment and operating material in car 109, January 1st, 1870.

24 blankets (std.).
24 mattresses.
24 mattress covers.
12 silver-plated spittoons.
2 combs.
2 hair brushes.

46 pillows (large).
100 sheets "
100 pillow-cases (large).
17 roller towels.
20 berth curtains.
2 W. B. mats.
1 aisle carpet.
1 floor carpet.
2 vest. "
1 whisk.
1 counter-duster.
1 camp stool.
1 screw-driver.
1 monkey-wrench.
1 hatchet.
2 oil cans.
24 blankets (S. white).
24 spreads (B. & W.).

Invoice of equipment and operating material in car 110, January 1st, 1870.

36 blankets (std.).
24 mattresses.
46 mattress covers.
47 pillows (large).
150 sheets "
150 pillow-cases (large).
1131 20 roller towels.
50 hand towels.
20 berth curtains.
2 rubber mats.
2 W. B. mats.
2 carpet mats.
1 floor carpet.
2 vest. "
14 china spittoons.
2 combs.
2 hair brushes.
2 whisks.
2 plated drinking cups.
1 bucket.
1 broom.
1 dust-pan.
1 feather duster.
1 chamois skin.
1 sponge.
2 stove brushes.
1 scrub-brush.
1 step-ladder.
1 monkey-wrench.
2 oil cans.
24 spreads (B. & W.).
1 mop.

Invoice of equipment and operating material in car 111, January 1st, 1870.

24 blankets (std.).
24 mattresses.
46 mattress covers.
46 pillows (large).
150 sheets "
150 pillow-cases (large).
20 roller towels.
50 hand towels.
20 berth curtains.
2 rubber mats.
2 W. B. mats.
2 carpet mats.
1 floor carpet.
2 vest. "
14 china spittoons.
2 combs.
2 hair brushes.
2 whisks.
2 plated drinking cups.
1 bucket.
1 broom.
1 dust-pan.
1 feather duster.
1 counter-duster.
1 chamois skin.
1 sponge.
1 stove brush.
1 scrub-brush.
1 step-ladder.
1 screw-driver.
1 monkey-wrench.
2 oil cans.
24 spreads (B. & W.).
1 mop.

Invoice of equipment and operating material in car 112, January 1st, 1870.

24 blankets (std.).
46 mattresses.
46 mattress covers.
46 pillows (large).
100 sheets "
100 pillow-cases (small).
20 roller towels.
20 hand towels.
20 berth curtains.
2 rubber mats.
4 W. B. mats.
1 floor carpet.
2 vest. carpets.
14 china spittoons.
2 combs.
2 hair brushes.
2 nail brushes.
1 whisk.
1 clothes brush.
2 plated drinking cups.
1 bucket.
1 broom.
1 dust-pan.
1 feather duster.
1 counter-duster.
2 chamois skins.
1 silver brush.
1 stove brush.
1 scrub-brush.
2 bars soap.
1 step-ladder.
1 screw-driver.
1 hatchet.
2 oil cans.
1 lamp scissors.
2 fire shovels.
2 fire pokers.
24 blankets (S. K.).
24 spreads (B. & W.).
9 lamp hoods.
1 mop.

1132 Invoice of equipment and operating material in car 113, January 1st, 1870.

24 blankets (std.).
46 mattresses.
46 mattress covers.
46 pillows (large).
100 sheets "
100 pillow-cases (small).
20 roller towels.
20 hand towels.
20 berth curtains.
2 rubber mats.
2 W. B. mats.
1 floor carpet.
2 vest. carpets.
14 china spittoons.
2 combs.
2 hair brushes.
2 nail brushes.
1 whisk.
1 clothes brush.
2 plated drinking cups.
1 bucket.
1 broom.
1 dust-pan.
1 feather duster.
1 chamois skin.
1 sponge.
1 silver brush.
2 stove brushes.
3 bars soap.
1 step-ladder.
1 screw-driver.
1 monkey-wrench.
1 hatchet.
2 oil cans.
1 lamp scissors.
2 fire shovels.
2 fire pokers.
1 mop.
24 blankets (S. red).
24 spreads (B. & W.).

Invoice of equipment and operating material in car 114, January 1st, 1870.

48 blankets (std.).
24 mattresses (sponge).
24 mattress covers.
48 pillows (large).
98 sheets "
150 pillow-cases (large).
20 roller towels.
72 hand towels.
20 berth curtains.
2 rubber mats.
2 W. B. mats.
1 floor carpet.
2 vest. carpets.
15 china spittoons.
2 combs.
2 hair brushes.
1 whisk.
2 brooms.
1 counter-duster.
1 chamois skin.
2 sponges.
1 screw-driver.
1 monkey-wrench.
1 hatchet.
1 hammer.
2 oil cans.
2 quilts (C. F.).
24 spreads (B. & W.).
1 mop.

Invoice of equipment and operating material in car 115, January 1st, 1870.

48 blankets (std.).
24 mattresses (sponge).
24 mattress covers.
46 pillows (large).
100 sheets "
150 pillow-cases (large).
20 roller towels.
72 hand towels.
20 berth curtains.
2 rubber mats.
2 W. B. mats.
1 floor carpet.
2 vest. "
14 china spittoons.
2 combs.
2 hair brushes.
1 whisk.
1 broom.
1 counter-duster.
1 chamois skin.
1 sponge.
1 screw-driver.
1 monkey-wrench.
1 hatchet.
2 oil cans.
2 quilts (C. F.).
24 spreads (B. & W.).
1 mop.

1133 Invoice of equipment and operating material in car 116, January 1st, 1870.

12 blankets (S. red).
24 mattresses.
24 mattress covers.
44 pillows (small).
50 sheets "
100 pillow-cases (small).
25 roller towels.
4 S. R. curtains.
16 berth curtains.
2 W. B. mats.
1 floor carpet.
1 vest. "
12 iron spittoons.
2 combs.
2 hair brushes.
1 whisk.
1 broom.
1 counter-duster.
1 sponge.
1 screw-driver.
1 monkey-wrench.
1 oil can.
24 quilts (C. F.).
12 spreads (B. & W.).

Invoice of equipment and operating material in car 118, January 1st, 1870.

24 blankets (S. red).
22 mattresses.
22 mattress covers.
44 pillows (large).
77 sheets "
60 pillow-cases (large).
40 " " (small).
14 roller towels.
12 hand towels.
2 W. B. mats.
1 aisle carpet.
1 floor carpet.
2 vestibule carpets.
14 iron spittoons.
1 comb.
2 hair brushes.
1 whisk.
1 broom.
1 counter-duster.
1 camp stool.
1 screw-driver.
1 monkey-wrench.
2 oil cans.
24 quilts (C. F.).
1 mop.
24 spreads (B. W.).

Invoice of equipment and operating material in car 119, January 1st, 1870.

48 blankets (std.).
24 mattresses.
46 mattress covers.
48 pillows (large).
150 sheets "
150 pillow-cases (large).
20 roller towels.
50 hand towels.
20 berth curtains.
2 rubber mats.
2 W. B. mats.
1 floor carpet.
2 vestibule carpets.
14 china spittoons.
2 combs.
2 hair brushes.
2 whisks.
2 plated drinking cups.
1 bucket.
1 broom.
1 dust-pan.
1 feather duster.
1 counter-duster.
2 chamois skins.
1 sponge.
1 stove brush.
1 scrub-brush.
1 step-ladder.
1 screw-driver.
1 monkey-wrench.
1 hatchet.
2 oil cans.
1 lamp scissors.
24 spreads (white).
1 mop.

1134 United States Circuit Court for the Eastern District of Pennsylvania.

PULLMAN'S PALACE CAR COMPANY *vs.* CENTRAL TRANSPORTATION COMPANY. } No. 44. October Sessions, 1886.

Answer of Pullman's Palace Car Company to the Cross-Bill of the Central Transportation Company.

Edward S. Isham, Wayne MacVeagh, for Pullman's Palace Car Company.

Filed Sep. 26, 1892.

SAMUEL BELL, *Clerk.*

1135 *Replication to Answer to Cross-bill.*

In the Circuit Court of the United States in and for the Eastern District of Pennsylvania. In Equity.

PULLMAN'S PALACE CAR CO. *vs.* CENTRAL TRANSPORTATION CO. } October Session, 1886. No. 44.

The replication of The Central Transportation Company, respondent, complainant in the cross-bill, to the answer of Pullman's Palace Car Company, complainant, respondent in the cross-bill in the above case.

This repliant, saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of such answer, for said replication thereunto says that it will aver and prove the said cross-bill to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied thereto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in law to be replied to, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said cross-bill it has already prayed.

JOHN G. JOHNSON,
For Respondent, Complainant in the Cross-bill.

October 12, 1892.

Endorsed: No. 44. October sessions, 1886. U. S. circuit court. In equity. Pullman's Palace Car Co. *v.* Central Transportation Co. Replication to answer to cross-bill. John G. Johnson, for cross-complainant. Filed Oct. 12, 1892. Samuell Bell, clerk.

1136 CENTRAL TRANSPORTATION COMPANY *vs.* PULLMAN'S PALACE CAR COMPANY.

THURSDAY, *March* 15, 1894.

Testimony on Behalf of Defendants in Original Bill.

Present: The examiner, Samuel Bell, Esq.; Frank P. Prichard, Esq., for defendants in original bill, and Messrs. Runnells and Isham for complainants.

FREDERICK C. N. ROBERTSON, being duly sworn, was cross-examined as follows:

By Mr. PRICHARD:

Q. You were asked on page 626 of the printed testimony to produce the book containing the entries of the earnings and expenses

of the Central division for the year ending July 31, 1887. Have you that book with you?

(All of this cross-examination is objected to on the ground of its immaterialty to any issue arising under the original bill, and immateriality and incompetency as to any issue under the cross bill.)

It is agreed that the testimony taken today shall be considered with the same effect as though this objection had been renewed to each question, and is taken subject to that objection.

A. I have it.

Q. Please produce it.

A. I produce Analytical Statement Book 4, and turn to folio immediately preceding folio 100.

1137 Q. I notice that this particular sheet is not one of the original pages of the book, but is pasted upon it. Will you please explain why that is so?

A. Because the original first sheet was an erroneous exhibit owing to the fact that in some previous month of that fiscal year, I think November, the clerk who wrote out the statements got the divisions mixed up; that was found out shortly after the statement was first made up, and this statement inserted correcting that error. The totals are all the same. I think, though I am not sure at the moment, that the Eastern division and the Pacific division were mixed. The figures in the Central-division column were not changed in any respect by the correction of the sheet.

Q. Will you kindly read those figures of the Central division?

A. (Reading.) Central division, number of cars operated, 216; gross earnings, $1,527,537.66.

Expenses.

Proportion of administration expenses	$45,373 98
Division salaries	30,907 40
Division expenses (division salaries)	
District salaries	56,597 87
District expenses	12,153 04
Conductors	97,261 71
Porters	47,060 10
Car-cleaners	72,665 19
Washing	35,096 63
Supplies	10,795 30
Total operating expenses	$407,911 22

1138 *Maintenance.*

Upholstery of seats and backs, and minor betterments and repairs of cars	40,380 94
Maintenance of equipment	96,984 61
Gross expenses	$545,276 77
Total net earnings	$982,280 89

Gross earnings per car.....	7,072 03
Gross expenses per car.....	2,524 43
Net earnings per car.....	$4,547 60

Percentage of operating expenses to gross earnings twenty-six and seventy one-hundredths; percentage of gross expenses to gross earnings thirty-five and seventy one-hundredths; percentage of operating expenses to gross earnings the year ending July 31, 1886, twenty-seven and forty-nine one-hundredths; percentage of gross expenses to gross earnings year ending July 31, 1886, thirty-six and forty-eight one-hundredths.

Q. In this statement what entry represents the item of repairs to the outside of cars and trucks as distinguished from the repairs to the backs and seats, etc.?

A. No item. It does not appear in this statement.

Q. Why was there no such item to be deducted from the gross earnings?

A. There is such an item to be deducted, but it is not shown in this statement because that is not the purport of this state-
1139 ment. It is separately shown elsewhere in the books, but it does not appear in this statement, because we do not put repairs in this particular statement.

Q. Why, in a statement made up to show the net earnings, do you not put the repairs?

A. This statement is made to show the gross earnings and what we call the total operating expenses and maintenance of the cars, which is a particular phase of the business. It is not intended to include any mileage received on these lines or repairs expended on them. It is therefore to that extent only a partial exhibit of the business of the company.

Q. Then the statement which you have produced does not show the true net earnings of the Central division for that year; is that so?

A. Not the true complete exhibit of the net earnings.

Q. What book would show the true and complete net earnings of the Central division for that year?

A. No book specially shows it, but it can be compiled from the books of the company.

Q. Then do I understand you to mean that the Pullman Company have no book or paper on which is shown the true net earnings of the Central division for the year ending July 31, 1887?

A. The Pullman Company has no book; it has a paper.

Q. What is the character of that paper; what do you call it?

A. A statement prepared to show what the actual result of the Central division is.

1140 Q. Have you that paper or a copy with you?

A. I have.

Q. Please produce it?

(Witness produced paper.)

Q. When was the original of this paper prepared?

A. This week.

Q. Prior to this week did the Pullman Company have no book or paper on which was entered the true net earnings of the Central division for the year ending July 31, 1887?

A. Not that I can recall. No book certainly.

Q. The Pullman Company did prepare a general statement showing the net earnings of the entire company for the year ending July 31, 1887, did they not?

A. Yes, sir.

Q. What book is that result entered in?

A. That was in the published financial statements of the company.

Q. Is not that entered in any book?

A. No, sir.

Q. I show you statement printed on pages 282 and 283 of the testimony on behalf of defendant in original bill, and ask you whether that is not a copy of the general statement for the year ending July 31, 1887?

A. It is impossible for me to state without having the document itself to compare it with.

Q. Assuming for the present that this is a correct copy, please point out to me the items in that in which would be included the repairs which are omitted in the account of the Central division in the books which you have produced.

1141 A. To a centain extent, it appears on the item of "Repairs of cars in excess of mileage." The amount of the item is $210,017.97.

Q. Does it appear in any other item?

A. No.

Q. Assuming for the purposes of my question that that is a correct copy of the annual statement, the total amount paid for repairs in excess of mileage would be that sum of $210,017.97 over all the lines of the Pullman Company, would it not?

A. Yes, sir.

Q. In what book of the company would the items which go to make up that two hundred and ten thousand and odd dollars be found?

A. That item is not made up of specific items, but is a balance, a difference between specific items of mileage and repairs of cars.

Q. In what book would that account in which that balance appears be found?

A. In the general ledger of the company.

Q. Under what head, what account?

A. Under the head, I think, of net mileage. I am not sure at the moment?

Q. In that net mileage account what are entered on the debit side?

A. The repairs of all cars.

Q. And on the credit side?

A. The mileage derived from cars

(Witness is requested to produce book referred to.)

Q. Will that account show the repairs paid and the mileage received on the Central division for that year?

1142 A. It does not show the mileage received, but the mileage charged.

Q. This balance of two hundred and ten thousand odd dollars, is the balance after charging the mileage?

A. It shows the mileage of cars and repairs of cars of the whole company.

Q. An inspection of that page will show which of the repairs were therein debited, and which of the mileage therein credited, belongs to the Central division?

A. No, sir; it would require further books for that. This is only one item on each side; the mileage of cars for the year and repairs of cars for the year; the details of that are shown in other books or papers.

Q. Is there any one book which contains an account of the mileage and repairs of the Central division for the year ending July 31, 1887?

A. I think possibly it is in one book.

Q. And what is the name of that book?

A. That would be Repair of Cars Book.

Q. Does that show the mileage as well as repairs?

A. That would show the mileage as well as repairs.

Q. From what book do you post this general statement which is contained in the net mileage account of your ledger?

A. That is posted from the general journal, and that shows the totals of the repair accounts and mileage account.

Q. Separated from each division?

1143 A. No; all by cars, but we know what cars are carried on each division.

Q. So that there does not exist any separate account which shows the balance for the Central division which is included in the balance of $210,000 for the whole company?

A. No, sir; no such document or book exists as to show that.

Q. I show you the annual statement of the Pullman Palace Car Company printed on pages 280 and 281 of the testimony of the defendant in the original bill, and ask you, assuming that to be a correct copy of the annual statement, to point out the item in the statement which includes the repairs to cars?

A. On page 281, as a deduction from the surplus, there appears an amount for balance of account for rebuilding and remodeling cars into latest standard Pullman cars, $197,262.07. That is taken from the repairs of cars account. That is the only item.

Q. May I assume then, if that is a correct copy of your annual statement, that that is the balance shown in the ledger account of net mileage in your ledger for that year?

A. Not necessarily. It is not exactly of the same character as the other item in the year 1887. But it is an expenditure for such which appears in this statement.

Q. Then may I assume, if that is a correct copy of your annual

statement, that your net mileage account showed no debit for that year?

1144 A. With this deduction, from recollection, I would say that that left a moderate credit; but of that I am not quite sure; I think so.

Q. I show you the annual statement for the year ending July 31, 1889, on pages 291 to 293, in the testimony of defendant in the original bill. Assuming that to be a correct copy of your annual statement, please show me the items in that which includes the repairs?

(Objected to because the inquiry is not within the scope of the order.)

A. The item is repairs of cars in excess of mileage, $84,915.45; and another item of repairs, which was also withdrawn from repairs of cars account, is for balance of account for rebuilding and remodeling cars into latest standard Pullman cars, $82,596.60. I would also like to amend the first answer I made in regard to 1887. That item I should have given also, in addition to the $210,017.97 for the year ending July 31, 1887; there was an item withdrawn from the repairs of cars account for balance of account for rebuilding and remodeling cars into latest standard Pullman cars, $42,226.38.

Q. In what book would separately appear the mileage charged on the lines included in the Central division for the year ending July 31, 1887?

A. There is no separate book, I think, kept for the Central or any orther division. I am not sure exactly. Those accounts are kept in the earnings.

Q. These charges are made against roads, are they not?

A. Yes, sir.

1145 Q. Would there not, in some book, appear the charges that were made during the year ending July 31, 1887, for mileage against the roads included in the Central division?

A. Not separately. There is one entry in the general journal charging all roads chargeable with mileage and crediting mileage of cars with the total, but not by divisions.

Q. But how are those summaries obtained; by adding together the charges against the various roads?

A. Yes, sir; those summaries are returned in the earnings-room and made up there from the car records.

Q. Is there not a charge against each road for the mileage of the year ending July 31, 1887, in some book of your company?

A. Yes, sir. I have just said there is such a book. The general journal shows the charge against each road monthly for the year ending July 31, 1887, and the total of those charges against those roads is credited to mileage of cars, but therein is not shown any division, Central or other. In fact, our accounts are kept by cars and not by divisions.

Q. But the charges of mileage are also kept by roads, are they not?

A. Certainly, to that extent they are kept by roads, but not by divisions. Those roads are not shown in divisions.

Q. In making up the statement of earnings of the Pennsylvania Railroad lines, found on page 558 of the complainant's testi-
1146 mony in the original bill, was any account taken of the mileage charged during those seventeen months against these lines?

A. Yes, sir. The item of gross earning includes mileage derived from those lines.

Q. Does it include all the mileage charges against those lines?

A. It does.

Q. Would you make the same answer to the statement following that of the Cincinnati, Hamilton and Dayton railroad?

A. No, sir; I believe that does not include mileage.

Q. How about the next one, the Cincinnati, Indianapolis, St. Louis and Chicago?

A. Nor does that. There was none collected on charges.

Q. Do you mean there was no charge?

A. There was no charge; it was exempt.

Q. Then you say yes to my question; it includes all that was charged?

A. Yes, sir; there was no charge.

Q. In the Cincinnati, Hamilton and Dayton railroad, do you mean that there was none charged?

A. There was mileage charged, but at that time there were grave doubts as to its collection, if I remember rightly, and a large part of it was afterwards exempted.

By Judge ISHAM:

Q. What do you mean by exempted?

A. They were freed from the payment of mileage on a certain part of the territory.

By Mr. PRICHARD:

1147 Q. I show you the annual statement for the year ending July 31, 1887, of the entire Pullman Company, printed in the testimony on behalf of the defendant in the original bill, pages 282 and 283, and ask you, assuming that for the present to be a correct copy, to show me the item of depreciation of property therein contained?

A. In that year there are two such items. In fact, there might be said to be three. One is for depreciation on cars transferred from cars to equipment account, to account of other car associations controlled and operated by this company, $237,625.10. The second is for estimated depreciation on cars out of regular service, but used for temporary purposes, $100,000; and the other, which might be regarded as depreciation, is for loss on old cars sold or destroyed, replaced by new, $69,071.83.

Q. Please explain what that item, "depreciation on cars transferred from cars and equipment account to account of other car associations," means.

A. It means that when we make an association contract with a railroad by which it acquires an interest in the cars, they are appraised, and they pay their proportion of the then value of the cars, which of course is necessarily less than the original cost. That difference between the original cost and the appraised value is the depreciation which is written off.

Q. Do you mean that those cars are sold to other associations?

A. A part interest in them is disposed of to a railroad company—
an undivided interest. By "association" I mean a railroad
1148 company making a contract with us has the option in it of
purchasing an undivided interest in the cars within a given time, and having a corresponding interest in the business.

Q. If I understand you correctly, assuming this copy of the annual statement for the year ending July 31, 1887, to be correct, the total amount charged off for depreciation in that year at the time when the cars and equipment were carried at $10,963,545.42, was $406,693.

A. That is right.

Q. In this paper which you have produced, which was made up last week, showing the result of operation of the Central division for the year ending July 31, 1887, you have charged off as a depreciation on $3,893,844.74 worth of property, $233,630.68, have you not?

A. I have shown on the statement that amount of depreciation.

Q. Why did you take the depreciation in the statement at a greater ratio than you took the depreciation in making up the annual statement for the company of the entire business?

A. The first item of depreciation in the annual statement referred to, is not a percentage, but a fixed amount resulting from the appraisal of the cars. The second item of $100,000 is not a percentage, but is an amount which it was thought expedient to write out of the surplus during that year on the cars referred to particularly in the entry. The third item is also not a percentage, but is a fixed
amount resulting from the sale or destruction of the cars,
1149 being the actual difference between the book cost and the
proceeds realized. The item shown in this statement, which I have produced, showing the result of the operation of the Central division for the year ending July 31, 1887, is a theoretical percentage of depreciation.

Q. I show you the annual statement for the year ending July 31, 1886, contained in the testimony of the defendant in the original bill, pages 280 and 281. Assuming that to be a correct copy of the annual statement, please point out the amounts crossed off for depreciation on cars and equipments during that year.

A. The item shown as charged off for depreciation in the statement referred to reads as follows: "For estimated depreciation on cars out of regular service, but used for tempor-y purposes, $100,000." Another item which might be called depreciation reads as follows: "For loss on old cars sold or destroyed replaced by new, etc., $85,396.65."

Q. The total of those items amount to how much?

A. $185,396.65.

Q. The value of your cars and equipments as shown in your assets for that year was how much?

A. $15,214,100.59; your statement of the amount for the year ending July 31, 1887, did not include the whole item.

Q. Then in stating the amount invested in cars and equipment for the year ending July 31, 1887, I should have stated it at $15,000,000 instead of $10,000,000?

A. Yes, sir; in round figures.

1150 Q. I call your attention to the annual statement for the year ending July 31, 1889, on pages 291 and 293 of the testimony on behalf of the defendants in the original bill. Assuming that to be a correct statement, please state what was written off for depreciation in that year.

A. $251,105.17.

Q. And the amount of cars and equipments which were then carried in the assets was how much?

A. $21,691,968.20.

Q. Why is it that on this statement of the result of the operation of the Central division for the year ending July 31, 1887, which you made up last week, you charged the depreciation at a sum which is very much larger in proportion to the capital invested in cars and equipment than the average depreciation shown by your annual reports to be charged in making up your annual statements?

A. The annual statements are not intended and do not purport to show the total or even theoretical depreciation on our cars and equipment.

Q. Are they not intended to show to your stockholders the net earnings of the company?

A. Yes, sir.

Q. And in making up these net earnings, do you not cross off items of depreciation as proper to be crossed off, or to be deducted from the gross earnings?

A. Not in that statement.

Q. Have you not already given certain items of depreciation which you have therein deducted?

A. Yes, sir. All of which, except one, are actual facts.

1151 One being the estimated depreciation on cars out of regular service, but used for temporary purposes. In the other cases the depreciation has actually accrued.

Q. What is included in the item which appears in all of the annual reports which I have called your attention to, of depreciation account, franchises, patents, etc.?

(Objected to as irrelevant and immaterial to any issue in the case.)

A. I can hardly at this time say any more than it suggests itself.

Q. Is not that an estimated item?

A. Yes, sir.

Q. So that in making up your annual statement to exhibit to

your stockholders the net earnings of the company, you do not include estimated depreciation of some kind?

A. Yes, sir; generally speaking.

Q. On page 659 of the complainant's evidence it appears that the counsel for the Central Transportation Company called for the book containing the earnings of the various lines belonging to the various railroad systems for the year ending July 31, 1887? Have you that book?

A. No, sir.

Q. Why not?

A. I was not instructed to bring it with me.

(Mr. Prichard calls for the production of that book.)

Q. Do you keep a book in which are entered by lines the earnings for each year?

A. Practically.

1152 Judge ISHAM: What lines do you refer to? Do you mean the lines of the Pullman Company all over the world where it operates its service?

Mr. Prichard replies that he presumes that all the lines are kept in the same book from the witness' answer, but he only desires to look at the book which contains the earnings of the lines which are included in the present controversy, to wit: the lines which either under their present or other ownership were included in the original contracts made with the Central Transportation Company.

Q. Does that book show net earnings or gross earnings, or both?

A. Gross earnings only.

Q. Is there any book kept which shows by lines the net earning?

A. No, sir.

Mr. Prichard calls for the production of the book which shows the earnings by lines of the lines above referred to.

Q. On page 689 of the complainant's testimony in the original bill it appears that you were asked: "Is it not a fact that for the year ending July 31, 1887, the earnings of the Central division, including the earnings of the Pennsylvania line part thereof, show a very large increase over the earnings for the year ending July 31, 1886." Can you now answer that question?

A. It is a fact that the year ending July 31, 1887, shows an increase in gross earnings over those of the year ending July 31, 1886.

Q. To what extent?

A. $113,152.61.

1153 Q. What is the fact with regard to the net earnings?

A. I do not know at present.

Q. What is the fact as regards the net earnings so far as shown by that book which you have produced?

A. The total net earnings of the Central division for the year ending July 31, 1887, as shown in the Analytical Statement Book No. 4, are $83,846.33 greater than the same items shown in the same book for the year ending July 31, 1886.

Q. You have stated that you do not know what the fact as to the

increase was with regard to net earnings; can you ascertain that fact?

A. Yes, sir; I can ascertain that.

Mr. PRICHARD: Please do so.

Q. On page 689 of the complainant's testimony in the original bill you were asked, "Is it not a fact that for the year ending July 31, 1887, the gross earnings per car of the Central division and also the Pennsylvania lines part thereof were largely increased over those for the year ending July 31, 1886?" Can you now answer that question?

A. Not without examination.

Mr. PRICHARD: Please make the examination.

Q. You were asked on page 690 of the complainant's evidence in the original bill, "Is it not a fact shown by your books that for the year ending July 31, 1887, the gross expenses for maintenance and operation of the Central division including the Pennsylvania lines part thereof, were considerably decreased in comparison with the gross expenses for operation and maintenance of the same
1154 division and line for the year ending July 31, 1886?" Can you now answer that question?

A. It is not a fact.

Q. Please state what the results of the comparison are?

A. The items referred to in the year ending July 31, 1887, for the Central division were $29,306.28 greater than similar items in the Central division for the year ending July 31, 1886.

Q. Please state what was the fact as to the percentage of gross expenses to gross earnings for the two years?

A. The percentage of gross expenses to gross earnings for the year ending July 31, 1887, in the Central division was thirty-five and seventy one-hundredths per cent.; for the year ending July 31, 1886, the same item was thirty-six and forty-eight one-hundredths per cent. That is based upon the figures as they appear in the analytical statement.

Q. Of course as that book, which you call the Analytical Statement Book, does not include the repair and mileage account, the figures which you have just given are exclusive of repair and mileage?

A. Yes, sir; and of any other figures which do not appear in the book.

Q. What other figures do not appear in that book excepting repair and mileage?

A. Depreciation, for instance.

Q. Anything else?

A. Interest on capital.

Q. On page 690 of complainant's evidence in the original
1155 bill you were asked, "Is it not a fact shown by your books that for the year ending July 31, 1887, the repair account of cars operated on the Central division and over the Pennsylvania lines was very considerably less than the repair account for the cars operated over the same lines for the year ending July 31, 1886." Can you now answer that question?

A. I cannot possibly tell at the moment.
Q. You can, however, ascertain?
A. I can ascertain.

Mr. PRICHARD: Please do so.

Q. On page 689 of the complainant's evidence in the original bill, you were asked: "Is it not a fact that for the year ending July 31, 1887, the gross earnings per car of the Central division and also the Pennsylvania lines' part thereof, were largely increased over those for the year ending July 31, 1886?" Can you now answer that question?
A. Not at the moment. I can ascertain.

Mr. PRICHARD: Please do so.

Q. On page 670 of the complainant's testimony in the original bill you were asked: "Have you not set apart any other funds for the purpose of meeting the claim of the Central Transportation Company, and is there not an account which will show that amount, and is not that account the contingency reserve fund?" Can you now answer that question?

(Objected to as being not within the scope of the present inquiry and of the order of the court under which it is proceeding; and further, because it is immaterial and irrelevant, to any issue under the original bill.)

1156 A. I can. I have such an account. I have set apart certain amounts for the purpose of meeting possible claims of the Central Transportation Company.

Counsel for the Pullman Company says that it is obvious that the witness is answering under a misapprehension, and they will make it the subject of explanation.

Adjourned until Friday, March 16, 1894, at 1 p. m.

THE CENTRAL TRANSPORTATION CO.
vs.
PULLMAN'S PALACE CAR COMPANY.

FRIDAY, *March* 16, 1894—1 p. m.

Present: The examiner (Col. Bell), and Messrs. Pritchard, Isham and Runnels, of counsel.

FREDERICK C. M. ROBERTSON.

Cross-examination continued by Mr. PRITCHARD:

Q. Have you the book containing that account?
A. I have not.
Q. Please produce a transcript therefrom.
A. I will.

Redirect examination by Mr. ISHAM:

Q. State whether in your testimony you have carefully distinished between the phrases "Central division" and "Central-vision lines," and "the Central Transportation Company lines."

A. I have.

Q. That is, meaning by the Central Transportation Com-
157 pany lines those lines of railway with which the Central Transportation Company originally had operating con-acts?

A. Yes, sir.

Q. Can you state the number of cars which were operated on the entral division during the year ending July 31, 1887?

A. The number was 233.

Q. In the Central division, as I understand it, you have included l the Pennsylvania lines north of Quantico, have you not, includ-g the Baltimore and Potomac, and the line from Washington to uantico?

—. Yes, sir.

Q. In your examination, in answer to some questions, you stated at certain accounts of earnings and repairs were not contained in y book, but were shown by certain statements prepared from time time. You do not mean to be understood, do you, as stating that e books of the Pullman's Company do not contain full and com-lete accounts of all those statements?

A. No, sir, I do not mean to say that.

Q. Please explain fully just what you meant, because there might e some obscurity about it.

A. I mean that where I have stated that there are not certain ooks or papers in existence, exactly as the question was asked me, et that the information is all in the books of the company, and n be collected and made into whatever shape is desired, in order show true results.

Q. That is, the books of the company contain full information upon all the subjects of repairs and expenses?

158 A. Yes, sir, repairs and earnings, expenses of all kinds. When called upon for such a statement, I can prepare such, owing the true results of any territory. I cannot show the ex-enses by lines. I can show the earnings by lines. I cannot show e expenses by lines, because a particular car, for instance, will run t only in this line, but in the next one contiguous to it, and there-re the expenses of a certain car have to be divided upon the basis mileage between those lines.

Q. By that apportionment, you can show it, however, by lines?

A. I can arrive at an approximate result by apportionment. The penses are shown by the cars.

Q. In response to the last question of Mr. Prichard in which he ked you to produce the statement of the account, the account to hich you referred is the one specified in his question, which is re-eated from page 670 of the testimony in the original case, and the

account referred to in the question of Mr. Johnson on page 668 of that testimony, as the contingency reserve account?

A. Yes, sir.

Q. Does not that account contain items that do not relate to the affairs of the Central Transportation Company?

A. Yes, sir, it contains several such items.

Q. Do those items have any connection whatever with the business of the Central Transportation Company?

A. None whatever.

1159 Q. Can you make a statement of that account which will include everything relating in anywise to the affairs of the Central Transportation Company, and omitting matters relating to other affairs with which the Central Transportation Company has no relation?

A. I can.

Recross-examination.

By Mr. PRICHARD:

Q. I do understand you to say, do I not, that there is no book or contemporaneous paper of the Central Transportation Company which would show the true net earnings of the lines included in the Central Transportation Company contracts for any particular year?

A. There is no book that shows the true net earnings, but such a statement can be prepared.

Q. There is no book or contemporaneous paper which would show the true net earnings of any division of the Pullman's Palace Car Company, including those lines, for any particular year?

A. No, but that also can be prepared from the records of the company.

Q. There is no book or contemporaneous paper which would show the true net earnings of each line, or of any particular line, included in the Central Transportation Company contracts, for any particular year?

A. No, sir, but that could be prepared. A statement can be prepared of that character from our records, which would be complete.

Q. Is there any book or contemporaneous paper which would show such net earnings for the divisions of which I speak, for any particular series of years?

1160 A. No, but that also could be compiled.

Q. Please state just what you would do, and what steps you would take in order to ascertain the true net earnings of the lines included in the Central Transportation Company contracts, for any particular year, say, for instance, the year ending July, 1887.

A. I should obtain from the auditor of receipts his statement of the gross earnings by lines of the lines referred to, which would include the number of cars required to operate these lines. I should then, taking for instance the Central Transportation Company lines, ascertain the average gross expenses per car of the cars in the Cen-

tral division. I should multiply that by the number of cars required in the lines referred to. I should then ascertain the actual cars that made earnings on the lines referred to during the period; I should ascertain their total miles run; their total miles run in the system referred to; and the total repairs charged against each car that made earnings on that system during that period. On the basis of the mileage made, on that system, and the total mileage made by the cars—that is, on the basis of that proportion, I should ascertain the proportion of the total repairs chargeable to that system. I would then ascertain what mileage, if any, had been received from these lines, and would deduct that from the repairs. I should then ascertain the value of the number of cars required to operate those lines—that is to say, the book value, or possibly the estimated value, and upon that I should charge depreciation

1161 against gross earnings. The result would be the net earnings derived from that system prior to the deduction of interest on capital.

In the previous question, where you have spoken of such a paper or such a book, containing net earnings of any division of the company, I should have excepted one or two which have been prepared, one of which is in evidence in this record.

I would also add that I would ascertain the amount of taxes paid or chargeable to that territory, and any other expenses, special or otherwise, that might be properly chargeable, outside of those previously spoken of.

Q. How would you arrive at the number of cars required to operate each line?

A. While I have a very good idea of how that is done, still it is outside of my particular province, and I would rather not answer the question, for fear I might not be accurate.

Q. Does it involve some estimation?

A. No; it involves familiarity with the lines and the accounts in connection with them. Those accounts are kept in what we call our earnings department. That department I have never gone through; I have a very good general knowledge of it, but not a detailed knowledge; I could state in a general way how the thing is shown without endeavoring to be too accurate.

By Mr. ISHAM:

Q. The determining of such questions as a practical thing, is not in your department?

A. No, sir.

By Mr. PRICHARD:

1162 Q. Are all the lines included in the Central Transportation Company contracts, in what is known as the Central division of the Pullman Company, as it was in 1887?

A. They were not all in the Central division. The C., H. & D. and the L., C. & L. are in the Southern division, and the C., I., St. L. & C. in the Chicago division. In my previous examination I

was in error in stating that the C., H. & D. was in the Chicago division; it was in the Southern division.

Q. I take for granted the method of ascertaining the true net earnings of the lines in the other divisions would be the same as that of the Central?

A. On the same basis.

Q. Have you, at any time since 1887 kept any distinct records of the lines included in the Central Transportation contracts, so as to enable you to readily ascertain the actual net earnings?

A. There has been no change in our system of keeping the accounts; the same practicability exists of getting at the net results.

Q. And you have made no additional accounts to facilitate the getting at the net earnings of the Central Transportation lines?

A. No, sir.

Q. So that, today, the only method of ascertaining the true net earnings of the lines included in the Central Transportation contracts would be the method you point out?

A. Yes, sir.

Q. And that work has never been done?

A. Well, I cannot recall what we may have done in the earlier years; after that examination may have been made about it; I do not recall that.

1163 Q. But, so far as you now understand, no such account has been made out except for the seventeen months already testified?

A. No, sir.

Q. It was not made out?

A. As far as I know.

Q. What other accounts are included in the contingency reserve account, besides the Central transportation?

A. I cannot speak from memory just what they are.

By Judge ISHAM:

Q. So far as you recollect?

A. I can only recollect one, distinctly, and that is in connection with the Pullman Southern Car Company.

By Mr. PRICHARD:

Q. Will the contingent reserve account show on its face what items belong to the Central Transportation Car Company, and what items belong to the others?

A. Yes, sir.

By Judge ISHAM:

Q. The Central division, as it was called in 1887, included lines which were not originally lines of the Central Transportation Company?

A. Yes, sir.

Q. Can you specify which those were?

A. I think I can.

Q. Please do so.

A. Outside of the Central Transportation Company lines, and included in the Central division, were the Atlantic Coast line, Lehigh Valley, New York and New England, Allegheny Valley, Richmond and Danville, East Tennessee, Virginia and Georgia,
1164 Savannah, Florida and Western, Florida Southern, Chesapeake and Ohio.

Q. There is also the Baltimore and Potomac, is there not? You include that, perhaps, as a part.

A. That, I think, is included in what is called in this statement "Pennsylvania system."

Q. And the line from Washington to Quantico, which is included in your statements of the Central division, was also not a Central Transportation Company line?

A. Well, I repeated the lines here as being outside of the Central Transportation Company lines.

Q. Have you any note of the Allegheny Valley?

A. Yes; that is outside.

Q. Did you mention that?

A. I did.

By Mr. PRITCHARD:

Q. What is that division called now in which you include those Central Transportation Company lines that were then in the Central Transportation Company division?

A. Atlantic division.

Q. And does it include now, other lines than Central Transportation Company lines?

A. Yes.

Q. What lines does it include now?

A. I could not tell you exactly.

Q. Is there any division you reach which includes only Central Transportation lines?

A. No, sir.

By Judge ISHAM:

1165 Q. My question was: It consisted of those lines in 1887. You understood me, did you not?

A. Yes.

Q. For how long a time did the Central division include the lines which you have mentioned? Do you know?

A. I cannot tell.

Q. Was it several years before and after 1887?

A. In all probability. But lines are sometimes changed from one division to another.

Q. But you do not know?

A. I don't know.

Respondents close.

1166 CENTRAL TRANSPORTATION COMPANY
vs.
PULLMAN'S PALACE CAR COMPANY.

THURSDAY, *April* 19, 1894.

Present: Samuel Bell, Esq., examiner, Mr. Johnson and Mr. Prichard for plaintiff; Mr. Runnells and Mr. Isham for defendant.

EDWARD H. WILLIAMS, having been duly sworn on behalf of defendant in cross-bill, was examined as follows:

By Mr. ISHAM:

Q. You were at one time connected with the Pennsylvania Railroad Company, were you not?

A. Yes, sir.

Q. In what capacity and during what period?

A. I went to Altoona as assistant general superintendent of the Pennsylvania railroad in February, 1865; I held that position until the first of January, 1866, and then succeeded Mr. Enoch Lewis as general superintendent, and so continued until the first of April, 1870, when I left the service.

Q. Had you been engaged in railway occupations before that time?

A. Yes, sir.

Q. Please state where and during how long a period.

A. The first place that I occupied that had any consequence was in the spring of 1850 as division engineer on a line running
1167 from the St. Lawrence river, nine miles west of Montreal to the Province line at Moores, New York. In 1854 I became connected with the Michigan Southern and Northern Indiana railroad as division superintendent, and continued there until the autumn of 1858 in that position in charge of what is known as the Western division from White Pigeon, Michigan, to Chicago. In 1858, in the spring, I became engineer and assistant superintendent of what was then known as the Milwaukee and Mississippi railroad, part of the Milwaukee and St. Paul system at present, and remained there a year and a half. In the autumn of 1859 I became assistant superintendent of the Galena and Chicago Union, having charge of the working of the road, and continued there until it united with the Chicago and North-Western and becoming a part of the system, and left there in 1865 to come to the Pennsylvania railroad.

Q. In the course of your business on the Pennsylvania railroad, you came to know of the sleeping-car service on that line, did you not?

A. Yes, sir.

Q. What sleeping-car service was then being operated there?

A. The Central Transportation Company system.

Q. Will you state generally what you know of the character of that sleeping-car equipment at that time, and with reference particularly to its adaptation to the service required at that time by the business of the Pennsylvania lines, and also in comparison with the

equipment and sleeping-car service that was operated on competing lines?

1168 A. I hardly know how to answer that. The Central Transportation Company had a number of cars similar in character—cars that were built were virtually of the same character until just near the close, possibly in 1869, they made some changes, getting out some round-end vestibule cars. The cars were possibly substantial enough until they were compared with those in service on other lines, and in the early days of the sleeping-car system they seemed to be fairly well, but the difficulty was, as time went on, the Michigan Southern and Lake Shore Company had some cars of their own which were running between Chicago and Buffalo, and, I think, running through to New York, which were more convenient and more comfortable. The Pullman Company were then improving, and their cars were better, more satisfactory to the traveling public, and were actually a better car than anything that we had on our line. I think really that there was no car, excepting the very old original Pullmans which might have been changed from some day cars, but what were better than any of the Central Transportation Company cars. There were many things in the construction of the cars; the Pullman cars were more thoroughly and substantially built; there was a greater feeling of security; they were more thoroughly and more substantially built than those we had on the Pennsylvania railroad, the Pullman and others. The various cars at that time not only the Pullman cars, but some other lines had cars of their own. Mr. William H. Terry, of Chicago, in some means had a line of cars on the Lake Shore road, run-

1169 ning between Chicago and Buffalo which were far better in those days, I think, than any cars when they first came on.

Q. I was calling your attention to the time while you were on the Pennsylvania railroad, say from 1865 on continually down to about 1870, as to the adaptation of the service then operated on that road to the requirements of the Pennsylvania lines. How far was that service satisfactory to the management of the road or otherwise?

A. I do not know how far it was satisfactory to the management of the road, but our traveling men and the men in the passenger department, who had to do with the passengers, criticised the cars and the character of the service very much, and the matter was frequently spoken of, about the necessity for an improved service upon the line.

Q. What was the ground and what the burden of their complaint?

A. The cars were not as comfortably arranged. There was a feeling sometimes, I must say, of insecurity, as to the strength of the cars; they were not as thoroughly built as the other cars on the other lines, and in case of any little mishap there was more damage or injury than there would have been if they had been constructed properly. It is hard for me to tell; I cannot bring my mind exactly to the matter in such a way as to explain it clearly.

Q. Did you come to know of difficulty on the part of those

agents in holding their own in the competition for travel on other lines?

1170 A. In no other way than by what our traveling men would tell me. The men engaged in the passenger service sometimes would complain, not only to me, but to Mr. Thompson, and the officials here in my presence, of the necessity for improved service.

Q. What reasons did they give?

A. That the cars were not equal to those on the Michigan Central and the Lake Shore lines, and losing business in consequence. The arrangement of the cars were not as comfortable; not as well adapted to the service.

Q. They thought it important to make a change in the service for that reason?

A. I do not know how that was.

Q. What was the condition of the cars making up the Central Transportation equipment, say in 1869 and 1870?

A. Along in 1868 there were some new cars introduced, a little gaudy in appearance, and there were some little things about them which were improvements. The other cars, the trusses and frames were light—I do not know how the new cars were—but the other cars, the trusses and frames were light, so if you happened to stop upon curves it was difficult to open the doors at times or close them. On either side of the aisle was what they called a state-room—there was no drawing-room—there was an aisle running through, a little state-room with two berths, which was very uncomfortable; the passenger in the lower berth would get no ventilion at times, and it was difficult to get the door open at times in conse-

1171 quence of the truss of the car not being substantial—the car settling in the curve would change its shape. I doubt if the framework was as substantial as the work of the Pennsylvania Railroad cars.

Q. The ordinary day coaches, do you mean?

A. Yes, sir; I think it was lighter than that. I know we used to think so.

Q. How did the construction of these cars contrast with the standard of construction required by railways like the Pennsylvania at that time for their sleeping-car service as that service had developed?

A. As they knew no other than that, and in fact I think they did not know how those were built, I do not think there was any criticism about that at that time.

Q. Speaking of those cars, how did they compare with the standard of other cars?

A. They were certainly no more substantially built than our Pennsylvania cars, and I do not think they were as well built, that is the framing of the car, was as good as our own Pennsylvania cars that were built on the line.

Q. I am calling your attention to the standard sleeping car of that time, say 1870, as sleeping cars were then built upon lines of the character of the Pennsylvania—how did the construction of those cars contrast with that standard?

A. I am unable to tell you anything about that previous to 1870.

Q. It is to 1870 I am calling your attention.

A. Immediately on the making of the contract with the Pullman Company—I left the road the 1st of April—the service com-

1172 menced the 1st of January, I think—immediately thereafter we built at Altoona five sleeping cars on designs furnished by them, and whether those cars were like what we had built previously I do not know, but they were a much more substantial character of work than anything we had ever seen in the way of cars. The framing and the trussing and all of the work was more substantial, but what it had been previous, I do not know.

Q. Under whose charge was that work done, the construction of these cars?

A. Under the charge of the master car-builder, of Altoona, John P. Levan.

Q. Did the difference in construction of which you speak, attract the attention of Mr. Levan and the parties engaged in that construction?

A. Yes, sir; so much so, that he spoke to me about it several times, about the amount of work that there was in them, and the time it would take to build them, and in every way being built so much more thoroughly than the cars we had been building. I think, however, that he was referring, I would say, to the passenger cars on the Pennsylvania railroad. I do not think that he spoke of that, because I do not know as they ever built a Central Transportation Company car at Altoona. I don't remember that they ever did.

Q. Did you ever have occasion yourself to notice and have observation of the construction of any of these cars when they were being constructed?

A. The Central Transportation?

Q. Yes.

1173 A. I only saw them when they were being repaired.

Q. Did you observe them then as to their construction as well as the trusses, etc.?

A. Yes, sir.

Q. State what you observed.

A. Merely that the framing was not as well braced as our own cars were, that is cars that I had been in the habit of seeing constructed; that the timbers were relatively lighter.

Q. What would you say as to the possibility of remodeling or altering over those cars so as to make out of them the cars like the then standard Pullman cars? Was their original construction such as to permit that to be done?

A. No; I think not, because the sizes of material were dissimilar to the other, and the manner of their framing I should think would not allow of their being braced like the Pullman.

Q. Specify these differences a little more.

A. It is hard work to specify that.

Q. You say the sizes of the timbers?

A. I could not give you particularly. We will say for instance

that the framework of one car might have been—the upright posts might have been at intervals of two feet, and that they might be two by four inches, then possibly, I do not know, I am only speaking of how they might have been—these might have been two and a half or an inch and a half by three inches instead of two by four. The material was lighter. The cars we had last. There had been just previous to that time an outcry against heavy rolling stock,
1174 and the whole tendency of the roads had been to reduce. The Pennsylvania railroad built a lot of freight cars there under Mr. Thompson's direction weighing sixteen thousand pounds instead of thirty or thirty-five which had no great strength in them; certain passenger cars were built at that time, and I fancy that they thought these would be heavy cars, although it is only my surmise, and they used certain size materials, although the work in all respects was smaller than we were using, or the Pullman Company were using, that is judging by the cars we built there.

Q. It made a lighter car and of less strength?

A. Yes, sir.

Q. What, in your judgment, would be the comparative lifetime of such a car as you have described compared with that of the standard Pullman car of that time; I am speaking of 1870?

A. That is a pretty hard question for me to answer; I hardly know how to answer that.

Q. Would it be anything like as great?

A. Oh, no, I should fancy not, but I could not tell because I have seen Pullman cars——

Q. I do not ask you to specify any years, simply relatively and comparatively?

A. I do not think it would be two-thirds, I should not naturally think it would be, as long as a Pullman car; that is a car built as substantially as those Pullman cars we built there would be.

Q. Could you give any estimate of the value of those cars constituting the Central Transportation Company equipment in 1869 and 1870—the value of those cars for service at that time on such lines of railway as the Pennsylvania?

1175 A. No, I think I could not, because it would be pretty difficult then to have introduced a car of that kind on the Pennsylvania railroad, when a movement was being made to get better service. I do not think such cars as those, with all respect to the Central Transportation Company, would have been put into service *de novo* on the Pennsylvania railroad at that time.

Q. Suppose those cars had been offered for sale in the market for service on railways, to what extent would railway lines like that of the Pennsylvania have bought such cars or have been likely to have bought such cars for service on their lines?

A. I do not know what to say about that.

Q. Suppose they were offered for sale in the market, would lines like the Pennsylvania line, or lines of that character, have bought such cars for service on their lines?

A. I think, in 1870, that the traveling public had been educated to a different style of cars, and it would have been pretty difficult

to have taken cars as they were constructed and dispose of them successfully. I think it is different however; they were using these cars, they were going along with them, and they were answering the purpose.

Q. Yes; but you mean that the Pennsylvania Company was using them?

A. Yes, sir.

Q. Suppose those cars had been offered for sale, were they of such a character that roads like the Pennsylvania would have bought them for their service? Would there have been any market for them?

1176 A. I hardly think they would with the light they might have in those days. I cannot say what effect that might have had on the price, but I think for their service they would hardly have equipped the road with those cars, or cars like those.

Q. In your judgment, would any railway at that time building or buying new cars for their equipment have built or bought cars of the character and construction of these at the time, or new cars, if they were buying them new?

(Objected to because the standard of measurement suggested by the question is not that which really existed at the time.)

Q. I mean at that time, in 1870, would any railway company, like the Pennsylvania, have *de novo* equipped itself with cars like these, of this construction and make-up, paying for them what it would cost to build such cars entirely new?

A. I don't know. I hardly know what to say.

Q. If your road at that time had been going to put on new sleeping cars, would it have gone and got new sleeping cars like these, of this construction?

A. I do not know what the Pennsylvania would have done.

Q. What would be your own view on the subject as an officer?

A. I do not think I would. But still at that time I do not know anything about what they paid for them. At that time the Central Pacific equipped itself with such cars as those. I think they bought them from them, but I have no idea what they paid for them or whether they were new.

1177 Q. They then bought some of those cars, did they not?

A. I do not know what they did. They had some cars of that kind running on their trains the first time I went to California.

Cross-examination by Mr. JOHNSON:

Q. I suppose that in 1870, as compared with the present time, the sleeping-car business was in a chrysalis state, was it not?

A. Relatively; yes, sir.

Q. And there have been gigantic improvements during the last twenty-four years in that as in all other car equipments, have there not?

A. Yes, sir; in the details of finish and arrangement I think there have been.

Q. And I suppose the Pullman car, which you first became familiar with in 1870, I understand, when you built five?

A. Yes, sir.

Q. As compared with the Pullman car today, was very different in every way?

A. Yes, sir.

Q. In every way, in strength and the method of construction and finish and convenience?

A. I think in framing, I do not know as they have made much improvement. In the manner of framing the cars I think the cars are about as I saw them at their works in Chicago—I think the framing is very similar, but in every other respect they are changed.

Q. In every other respect they are changed?

1178 A. Yes, sir; of course.

Q. That is the case with locomotives and day cars and everything else in passenger transportation?

A. Yes, sir.

Q. About 1868 or 1869 there began to be marked changes upon your methods of construction, did there not, of sleeping cars?

A. I think that the Pullman cars improved; I do not know as about 1870, their cars were changed then from what they were in 1866 or 1867, but previously to that, from 1866 to 1867, then their change commenced.

Q. And I suppose with people in that business as with ordinary cars, as changes were made, the old cars would be run, altered if necessary, put into less important service, if possible, and new equipment gradually supplied, taking the place of the old?

A. Yes, sir.

Q. With the Pennsylvania Railroad Company's own car service; as the passenger cars of the company increased in standard, it would use the old cars, make changes, etc., and gradually adapt itself to the new requirements; is not that so?

A. Yes, sir; that is natural. In our case there we made haste in my time slowly. There was no great change made in Pennsylvania passenger cars while I was there. We would go to work and build cars which were in advance of anybody else and then we would lie still and the others would pass us, and then in time we would come up and pass them. That was the way.

1179 Q. After you had refitted and were ahead, and these other people in the course of years would catch up and get ahead of you, you would have to live out the inferiority, gradually removing it by changes, I suppose?

A. Yes, sir. Yes, to a certain extent.

Q. I presume the Pennsylvania Railroad Company, concerning its own cars, locomotives and other passenger service, when they found they were becoming a little under the higher standard, if they had attempted to have sold those things out, they would have realized very little indeed for them, and so they held onto them?

A. Yes, sir. We fortunately had lots of branch lines that we could run a load onto.

Q. The Michigan Southern cars, which were not Pullman sleeping cars, were those with which you were most familiar before you built those five, were they not?

A. No, sir. I was not on the Michigan Southern line when they were running them. They came subsequent to my time. Only as a passenger in passing over, I would go east either on the Michigan Southern or the Michigan Central, and there I would ride either in the Pullman or in the cars of the Michigan Southern Company.

Q. They represented, as you saw them, a very advanced stage of sleeping-car convenience?

A. Yes, sir; both styles were in advance.

Q. And I take it for granted that the cars sold to a railroad company that did not want them would sell much less well than the value of those cars in a service under a contract which required them?

1180 A. I would fancy, yes, sir, of course.

Redirect examination by Mr. ISHAM:

Q. Mr. Johnson called your attention to the process by which old railroad equipment in course of time becomes obsolete and antiquated, and you concurred in his statement that a railroad company having such cars would continue to use them and work them out on side lines and less important lines and in less important service, etc. While the railroad company would do that, would that interfere at all with the fact that when an individual car had become antiquated and obsolete that as an individual asset it would not find as ready a market or be of as much value as a car that was of modern construction and not an obsolete one?

A. I do not know as there is any necessity of answering that; it is self-evident.

Adjourned until Friday, April 20, 1894, at 10.30 a. m.

FRIDAY, *April* 20, 1894.

Meeting held pursuant to adjournment at 10.30 o'clock a. m., there being present:

Mr. Prichard, for complainant;

Messrs. Isham and Runnells, for defendant.

G. CLINTON GARDNER, having been duly sworn, was examined as follows:

By Mr. ISHAM:

Q. State your residence and occupation?

A. I am general manager of the Ohio River railroad, and I reside at Parkersburg, West Virginia.

1181 Q. Were you engaged with or in the employ of the Pennsylvania Railroad Company along about 1869, or 1870? If so, state during what period you were engaged with that company, and in what capacity?

A. I was employed on the Philadelphia and Erie railroad in 1869,

as assistant engineer, located at Erie. I was afterwards brought to Altoona as assistant superintendent of motive power in 1870. I was assistant superintendent of motive power I think a year or more, and was then superintendent of motive power, and afterwards general superintendent of the Pennsylvania railroad up to 1879.

Q. In the course of that employment did you become acquainted with the equipment and administration of the sleeping-car service on the Pennsylvania railroad?

A. Yes, sir; while assistant superintendent of motive power, we constructed Pullman cars for the Pullman Company, that is, I understood they had a contract that replaced the Central Transportation Company's contract.

Q. How many of those cars did you construct, and when? I am referring now to the first you so built.

A. They were commenced about 1870, I think, or possibly before that. But it was in 1870, and 1871, and some of them possibly a little later than 1871, were constructed. How many I cannot recollect. That is a matter of record.

Q. Do you remember for what purpose those cars were constructed?

1182 A. Those cars were constructed to replace the Central Transportation Company's car that was antiquated, and these were of the improved pattern then in use, and the Central Transportation cars were the original patents which were obsolete or growing obsolete at that time.

Q. In your capacity as connected with the Pennsylvania Railroad Company the old Central Transportation Company cars in service on that line in 1869 and 1870 came under your observation so that you knew about those cars, did you?

A. Yes, as assistant superintendent of motive power I was particularly in charge of the construction at the Altoona car shops, the new car shops, and although Mr. Isaac Dripps was the superintendent of motive power, I had a great deal to do in the superintendence of the construction, and as superintendent of motive power after Mr. Dripps' time expired I had then all to do with the construction of them under the plans submitted by the Pullman Company. They had their cars designed and gave us the working drawings, and from that these cars were constructed, and from time to time the Pullman officers, if I remember right, A. B. Pullman was one who frequently visited the shops and directed certain parts and changes and ornamentation, etc. Then there was a decorator who visited there frequently for the decoration of these cars, and they were on a new design based on engineering principles entirely different from the construction of the Central Transportation car, and, if I remember correctly, the sides of the car were thoroughly

1183 trussed and of unusual strength for cars at that time that were being built.

Q. I want to call your attention particularly to the old cars of the Central Transportation Company that were then running on the line. Will you state what you know of the condition of those

cars at that time and of their suitability for the sleeping-car service as that had developed of the Pennsylvania lines in 1870.

A. The Central Transportation car was an old design, and the construction of it was entirely different from the construction of the Pullman car. The Pullman car was thoroughly trussed and built on engineering principles, and of considerably more strength, and would last probably two or three times the life of a Central Transportation car. The berths of a Central Transportation car were cumberson, and, as I recollect, the upper berth in sections, that is, in two parts that folded, which was unwieldy, and the Pullman car upper berths presenting a single bearing were more comfortable and sought after by the traveling public. Afterwards as general superintendent I am not sure whether any Central Transportation cars at that time were in service. But before I was general superintendent it was a matter of general comment that the traveling public sought the Pullman car rather to accept berths and accommodation in the old Central Transportation car; making it necessary for us where we were compelled to use the Central Transportation car for the want of equipment to modernize as much as possible the Central Transportation car. Yet it was impossible to modernize it in construction, only in interior fitting.

1184 Q. Why was it impossible to modernize it?

A. On account of the construction of the car.

Q. The original construction?

A. The original construction of the car was not similar to the construction of the Pullman, nor anything that could be made equal to it without building a new car.

Q. What was the character of those cars in respect to their weight and size as compared with the cars that had come to be the standard cars?

A. The Central Transportation car was much lighter than the Pullman car. The Pullman car weighed, I should think, possibly a third more than the Central Transportation car.

Q. That is, lenghth for length?

A. Yes; that is, the original car. The cars that were built for the Central Transportation Company later were more elaborate, and they had what they called the silver palace car, which was quite heavy and fitted out with silver posts and trimmings in the interior, making a very gorgeous looking car, but at the same time not with the comfort of the Pullman car.

Q. Did these decorative fittings of the later silver palace cars and that character of work add anything to the strength and durability of the cars in anywise?

A. No; the strength of the car was the trussed sides and sills of the car, and their framing was entirely different and not of the strength of the Pullman framing; and of course any additional weight in the car would rather tend to weaken the car than to strengthen it, because the strength of the car is in the sills and in the trussed sides.

1185 Q. These cars were constructed with these silver-plated posts running from the floor to the top, were they not?

A. From the top of the berths to the top.

Q. So it was a straight column from the side of the aisle to the roof?

A. Straight column, yes.

Q. What would you say of these interior fittings, this silver fitting, etc., that was so decorative, as contributing to the comfort of the passenger and making those cars attractive to passengers as compared with the Pullman?

A. Nothing at all; it added nothing to the comfort; it was merely the effect of the appearance, and you might say it gave additional support to the roof in case of a turn-over, but gave no strength to the car, as the strength is in the body of the car and not in the upper work.

Q. Did you have occasion to make repairs and reconstructions from time to time of these old Central Transportation cars?

A. Yes, sir; we repaired them and kept them in service as long as it was possible, and even in my own opinion longer than it was of interest to the Pennsylvania Railroad Company. My impression is that had they put in the new Pullman equipment their travel would have been much better, because other roads had adopted the Pullman standard and the Pullman Company gave better service to the patrons of the road.

Q. Did you attempt to introduce at any time into any of these old Central Transportation car frameworks any of the interior equipment of the Pullman upper berths in place of the old things?

1186 A. Yes, sir; as I stated, the upper berths were changed in some cars, but the change was not found advisable or economical.

Q. Why?

A. Because it did not give the comfort that the Pullman car gave in the general riding of the car. All these cars were comparatively light in construction, whereas, the Pullman car was heavy in construction and rode easier and gave greater comfort to the passengers, and the passengers sought the Pullman car in preference to the old car, even though it was modernized as far as it could be on account of the construction.

Q. What did you find as to the capacity of these old frameworks in point of strength and solidity to support and carry this upper berth and construction of the Pullman car?

A. It was too light for the changes that we would have made in the upper berths and in the interior fittings.

Q. And did you abandon the idea of making those changes for that reason?

A. That idea was abandoned not by any direct order or instructions, but virtually by being replaced by Pullman cars. We worked out the Central Transportation car as rapidly as possible, so as to get the more perfect equipment of the Pullman car.

Q. How soon after the Pullman Company took the management of the sleeping-car service did these old Central Transportation cars

commence to be worked off the line and out of service as you have stated?

1187 A. We worked them off as rapidly as possible. I can't give the dates in regard to that.

Q. About how soon did it commence; right away, or after a long interval?

A. Right away; we commenced at once to work them off; we commenced by the construction of the new Pullman car at Altoona.

Q. What do you mean by working them off?

A. We commenced by the construction of the new car at Altoona, and gradually got the Central Transportation car out of service. Every effort was made to continue them in use by such modification as we found it profitable to make, but the modification that we made were not profitable, and that was soon abandoned.

Q. What would you say of the average value of the Central Transportation Company sleeping cars that you found in service on the Pennsylvania road in 1870, at that time?

A. It is difficult to arrive at a valuation of these cars, as a car is worth what it will bring; for Pennsylvania Railroad use I did not consider them of any value whatever; yet, having them, we had to make the best use of them possible, and, hence, the changes I have stated were made; but after the car was placed on the side track, and not taken up again for repairs or remodeling, it was only worth what it would bring in the way of scrap, or if you could find any one to purchase it you might possibly sell them as high as $4,000 or even $5,000; but anything that the Pennsylvania railroad did not want no other railroad wanted.

1188 Q. What market was there at that time for the selling of such sleeping cars as those when they went out of service on the Pennsylvania lines. Where would you find the market to buy such cars?

A. There was no market in that sense. They might possibly have found an isolated purchaser who had a short night run that might be willing to purchase. But the small roads generally if they were under a sleeping-car contract would demand equally as good equipment as the trunk-line railroads. A small corporation is generally more sensitive in regard to those matters than a large corporation.

Q. You think the practical value of these cars then was what they were worth to break up?

A. What the old material would realize is the value.

Cross-examined by Mr. PRICHARD:

Q. You have several times spoken of a comparison of the Central Transportation cars with the Pullman cars. In doing so, did you have in your mind the Pullman cars which were built by you in 1870, at Altoona?

A. I had reference to the Pullman car as first designed and built by us at Altoona.

Q. Had you much familiarity with the construction of Pullman cars before that time?

A. None.

Q. For the last thirty or forty years railroad equipment has been in a constant state of development, has it not?

1189 A. Yes. The Pullman car itself has been improved vastly since the first construction. But the original construction was ahead and superior to the previous construction.

Q. Is it not a fact that in the history of railroad equipment the minute an improvement is made and an improved car is put on a route, the traveling public commence to draw comparisons between that and the previous equipment, and to demand better equipment?

A. As a general thing they do. There are certain things, however, that are rated as improvements that the traveler soon learns does not add to his comfort, and the old traveler will take a comfortable Pullman car that he would not change for anything that was even more modern where the same comforts were not given.

Q. But given a real improvement the traveling public practically compel the roads in the course of time to bring their other equipment up to that improvement, do they not?

A. Undoubtedly, or else they will lose travel.

Q. Did your acquaintance with the Central Transportation cars which you acquired after you became superintendent of motive power of the Pennsylvania railroad, lead you to know that they differed very much in construction; and that from the period of the first to the period of the last cars there had been changes in construction?

A. In Central Transportation construction? Undoubtedly. The Central Transportation construction of their last cars was probably an improvement over the first car, although I do not

1190 know of personal knowledge the difference. In the construction of the original Central Transportation car there were a great many defects which endangered the safety of the car. Those were gradually worked out, and yet were not modernized sufficiently to get rid of all the objections until the Pullman car came in, and the Pullman car, although perfect construction at the time we built them has been gradually modified and improved since then, and the present Pullman car is a car far superior to what we constructed, and I understand there have been some at the Pullman shops near Chicago that are very superior. I have not examined the detail of construction, but it naturally grew to a very superior construction from the experience they had in the wear of the car.

Q. Do you know whether or not some of the later Central Transportation cars had been built by the Pennsylvania railroad itself within a year or two from the time of the introduction of Pullman cars on the Pennsylvania road?

A. I don't know about the Central Transportation Company prior to my going there in 1870. My first service on the Pennsylvania railroad was on the leased line, as stated, in 1869, and I went to Altoona in 1870. Prior to that I was not familiar or acquainted with the construction of any of the equipment.

Q. You do not remember the number of Pullman cars that were from time to time put on the Pennsylvania road after 1870, and the

length of time it took before all the Central Transportation cars had ceased to be run, do you?

1191 A. No; I can't give the date.

Q. And in giving your estimate of value of cars you have not been shown the table of actual receipts by the Pullman Company of moneys from the Pennsylvania Railroad Company for various cars required in the service?

A. No, sir; I have seen no statement.

Q. And you have not been shown the printed statement annexed to the answer of the Pullman Palace Car Company in this case showing receipts as high as $11,000 for Central Transportation cars?

A. No, sir.

Q. Prior to the lease by the Pullman Company of the Central Transportation Company, were any Pullman cars being operated on roads which reached the Atlantic seacoast?

A. I am not posted in regard to when the lease was made to the Pullman Company, nor when the Pullman contract was made with the Pennsylvania railroad. Those were matters that did not come under my supervision or related to the working department of the Pennsylvania railroad in any way, except so far as that relating to the work required of repairs and construction, etc. We had nothing to do with whether it was the Central Transportation Company or Pullman Company. When the change was made, it was made, if I recollect right, prior to my coming to Altoona, and the only sleeping-car contract on my advent at Altoona was the Pullman.

Q. Prior to 1870, did you know of any road reaching the Atlantic seacoast on which Pullman cars were being run?

1192 A. I do not know; I am not posted in regard to that.

Q. You have spoken in your testimony about other railroads having adopted Pullman cars. I wish you would state all the roads of which you have knowledge that prior to 1870, used Pullman cars.

A. My information on that subject is rather general, not being in connection with the transportation department prior to 1870. The Baltimore and Ohio was using, in my earliest recollection, the Woodruff & Knight patents. I think it was printed on their card. And the Pullman Company was originally, I think, on the Chicago and Alton, if my recollection serves me. Yet, still, I would not be positive in regard to that, and, therefore, could not give evidence prior to my connection with the transportation department, which was in 1870.

Q. Let me ask you this: The word "standard" has been used, I think, once by Judge Isham and once by yourself, in relation to sleeping cars. Can you say that there was any standard sleeping car in use by the railroads prior to your building the five Pullman cars at Altoona?

A. No; in using the word "standard" I refer to the drawings then in existence as being approved. That is the only way I use the word "standard."

Q. That is, the drawings from which you built the five cars?

A. From which we built those cars. They were the standard at that time. The standards of railroad equipment are changing constantly, with all sorts of modifications and improvements,
1193 and as for a standard sleeping car today I do not think we are any nearer a standard than we were at that time. There are varieties of sleeping cars and we have the Monarch, the Woodruff chair car and parlor car and all those different brands of cars, so that each one may claim theirs as the standard. It is very much like the gauge of a railroad. We are getting somewhere near that now as to what the standard gauge of a railroad is, yet still the word "standard" has been applied to the four feet eight and a half inches for some time. Still it was not standard by any means, because the Pennsylvania railroad is four feet nine, and parts of it were four feet eight and a half, and the Jersey roads were run at four feet ten for a long while. The old Erie is a six-foot gauge, yet they wanted to make that a standard.

Q. You have said what is of course apparent, that to attempt to sell sleeping cars after they had been used on a road for any length of time and after new improvements had been made would practically be to dispose of them for their material, unless you rebuilt them, of course?

A. For their material; as scrap.

Q. I suppose the value of any equipment of sleeping cars depends necessarily on the contracts which the owners of those cars have with the railroads for the running of the cars, does it not?

A. If I knew of the contracts I might express an opinion on that subject. But I certainly could not give any evidence on it.

Q. What I mean is this: The value of sleeping cars which
1194 are being operated by a sleeping car company, if they are to be put in the market for sale, is a very different value from their value to the company if they are to be run under existing contracts with railroads, is it not?

A. Undoubtedly. The Central Transportation cars to the Pennsylvania railroad as long as they had to run them, had a certain value, which would be above the value I would fix on those cars if the Pennsylvania railroad had not run them. If they could have gotten rid of those cars the value of the cars was nothing except for scrap, and as to getting rid of them or being compelled to run them I could not state whether they had any right to get rid of them or whether they were compelled to run them or not, not being familiar with the contract governing in the case.

Re-examined by Mr. ISHAM:

Q. Did you know the sleeping-car equipment that was being operated on the Erie road in 1870?

A. No; I did not. I was not familiar with it.

Q. Did you know whether or not the Pullman cars were being operated on the Michigan Central in 1870?

A. I don't recollect. I know, or at least I was informed, that the original Pullman—in fact, I think his first car was on the Chicago and Alton.

Q. But you did know that the Pullman cars were operated over the greater part of the roads west of Chicago beyond the Mississippi river to the Pacific coast, did you not?

1195 A. I knew the Pullman car was more out of Chicago, both south and west, than anywhere else at that time.

Q. And you knew it occupied largely that field, and that they furnished sleeping-car connections across to the Pacific coast, did you not?

A. That I understood was the object of the contract of the Pennsylvania railroad, to extend its lines by having a car common with the greatest number of roads.

Q. Giving the benefit of those connections?

A. Giving the benefit of those connections.

(By agreement of counsel the signature of the witness is waived.)

Adjourned until 3 p. m.

CENTRAL TRANSPORTATION COMPANY
vs.
PULLMAN'S PALACE CAR COMPANY.

PHILADELPHIA, *April* 20, 1894—3 p. m.

Present: Samuel Bell, examiner; Mr. Johnson and Mr. Richard, for plaintiff; Mr. Runnells and Mr. Isham, for defendant.

FREDERICK KNOWLAND, a witness called on behalf of the defendant in cross-bill, being duly sworn, testified as follows:

By Mr. ISHAM:

Q. What is your full name, business and address?

A. Frederick Knowland; I am general eastern freight agent of the Missouri Pacific Railway system in New York; No. 391 Broadway.

1196 Q. What was your business occupation prior to the year 1869?

A. General eastern agent of the Pittsburgh, Fort Wayne and Chicago railway, with headquarters in New York.

Q. That was before the lease of the Pittsburgh, Fort Wayne and Chicago railway to the Pennsylvania Railway Company?

A. Yes, sir.

Q; What was your engagement during the years 1869 and 1870?

A. General western agent of the Pennsylvania railway, with headquarters in San Francisco; the Pennsylvania railroad and leased lines.

Q. In the course of your business, in your capacity as the general eastern agent of the Fort Wayne railroad prior to 1869, and after that as the general western agent of the Pennsylvania lines, did you have occasion to observe and to know something of the sleeping-car equipments operated by the Pennsylvania lines prior to 1870?

A. Yes, sir.

Q. Did you come to have a knowledge and acquaintance with

the equipment of the Central Transportation Company on those lines prior to 1870?

A. Yes, sir.

Q. Will you state what you know of the character and condition of that equipment, and its suitability, in 1869, and 1870, for the service required by the passenger business of those Pennsylvania lines? State fully and freely what you know upon that subject?

1197 A. From the time that I took charge of the interests of the Fort Wayne road in the entire East—I had charge of the entire East—of course I had to compete with the New York Central, and the New York, Lake Erie and Western, from all eastern points, clear up to Bangor, Maine. The greatest competition that I had, at least I felt it that way, was our sleeping-car service. It was not in keeping with the service that was performed upon or used upon the Michigan Central, the New York Central, and the New York, Lake Erie and Western. At that time Jay Gould and Fiske had charge of the Erie, and they put some very fine cars on there, and the New York Central had very fine equipment.

Q. Do you remember what the equipment was on the Michigan Southern road?

A. I do not.

Q. Do you remember what it was on the Michigan Central road?

A. Yes.

Q. What was it?

A. Pullman.

Q. That connected with the New York Central road?

A. Yes; in order to compete successfully I had to pay much larger commission to ticket-sellers for the business. I really, in a great many instances I paid $1 more than was paid by the lines, the New York Central and Michigan Central, in order to meet the competition.

Q. What do you mean by saying you had to pay more?

1198 A. In those days we put out tickets in every little hamlet all over New England, on commission, to be sold to the far West, and in selling those tickets of course each man had the issuing of the Erie, the issue of the New York Central, and had my issue, which was the Pennsylvania line. However, we used the Pittsburgh, Fort Wayne and Chicago issue on the Pennsylvania line at that time. I insisted upon using our own issue, to show what I could do in the market. I did not want to use the Pennsylvania issue and have the business mixed up with them. The Pittsburgh, Fort Wayne and Chicago issued their tickets over the Pennsylvania road, and I furnished them all over New England. What I mean by having to pay more is, that in order to meet the competition with those lines—for instance, a man would come up to a ticket window and say he wanted a ticket to Chicago, if the ticket agent got $1 more he would say "Why don't you try the Pennsylvania line?" "I don't like their sleeping cars. I would rather go on the Michigan Central." The incentive of $1 was to get the agent who sold the ticket to use his influence.

Q. You had to cut the rates more than the other lines to get the business?

A. Yes, that is exactly what I mean. I had to raise the antes. I done that on the quiet with the ticket agent to get his influence to sell tickets over the Pennsylvania road.

By Mr. PRICHARD:

Q. You made cut rates and increased the commission?

1199 A. Yes, sir; I increased the commission. There was no rates cut in those days; it was simply a question of commission. When the rates were demoralized they were demoralized all over. We were all on an equal basis. When a man wanted to do a little sly work he done it in another way.

By Mr. ISHAM:

Q. As I understand, you mean to say that it cost you more to secure the business by reason of this equipment?

A. Yes, sir; I said frequently to Mr. McCullough and Mr. Scott both, that if I had proper sleeping car equipments it would save thousands of dollars, that I had to buy business.

Q. Who was Mr. McCullough, and who was Mr. Scott, of whom you speak?

A. Mr. McCullough was vice-president and general manager of the Pittsburgh, Fort Wayne and Chicago road and Cleveland and Pittsburgh. Mr. Thomas A. Scott was for a period of the time I was on the Fort Wayne road, was vice-president during Edgar Thomson's time, and after his death he became president of the Pennsylvania railroad.

Q. Who was Edgar Thomson?

A. President of the Pennsylvania railroad.

Q. What were the reports upon this subject of sleeping-car equipments which you say you made to Mr. Scott and to Mr. McCullough? I will ask you first with regard to Mr. McCullough.

(Objected to by Mr. Prichard as immaterial and not evidence.)

A. Mr. McCullough being my superior officer I was re-

1200 sponsible to him to secure the traffic. I made frequent complaints to Mr. McCullough as to our sleeping-car service. It was not equal to that furnished by our competitors. Finally Mr. McCullough asked me to meet him in Philadelphia.

Q. What reason did you give? In what respect was it not equal?

(Objected to by Mr. Prichard as immaterial and not evidence.)

A. The cars were not up to the standard of the day; they were not equal in every respect with the cars furnished by the Erie and New York Central. Mr. McCullough telegraphed me to meet him here in Philadelphia and go with him to see Edgar Thomson and make a statement to Mr. Thomson. I done so.

Q. With Mr. McCullough?

A. Yes, sir; Mr. McCullough was present. There was nothing done.

Q. What did you say to Mr. Thomson?

(Objected to by Mr. Prichard as immaterial and not evidence.)

A. I explained to Mr. Thomson that we labored under great disadvantage in the East in competing for passenger traffic, on account of our sleeping-car equipments, that our competitors had very much better service, and we heard it on all sides. We heard it from all the ticket agents. The men who sold tickets repeated the same thing to me in all my travels over New England.

Q. State whether or not after Mr. Scott succeeded to Mr. Thomson as president of the Pennsylvania road, the same questions arose?

(Objected to by Mr. Prichard as immaterial and not evidence.)

1201 A. Yes. After Mr. Thomson's death Mr. McCullough and I came East on his special car here, and I brought the matter up in his car, and told him what disadvantages I was laboring under, and he says: "You had better not go on to New York, but come down and see Mr. Scott with me, and make the same statement to Mr. Scott as you do to me."

Q. Did you do so?

A. Yes, sir.

Q. Tell what transpired?

(Objected to by Mr. Prichard as immaterial and not evidence.)

A. We stopped over and had breakfast in the car, and we called on Mr. Scott, Colonel Scott, and I made the statement to him, and he listened to me very attentively. He said: "Knowland, I will see Mr. Pullman and see if it is not possible to make an arrangement by which we can get the Pullman service on the Pennsylvania road." I was very much gratified to know that he was going to make an effort in that direction, and left for New York on the 1-o'clock train, I think.

Q. Was anything said of any difficulties in the way, or any question of arrangements that would have to be made for that purpose?

A. He said the Central Transportation Company had a contract, but he thought that there could be some amicable arrangement made, that he would see Mr. Pullman and probably some arrangement could be made by which Pullman would lease the Central Transportation Company, or he would get the cars on the road in some shape or other.

1202 Q. Did you make any recommendations whatever as to what service should be put upon the Pennsylvania lines?

A. The Pullman cars were on all the western lines, and that was another great disadvantage we labored under. All their employés worked right up to Chicago, and of course their influence all tended to place the passengers upon lines that run their cars in there.

Q. On what roads west of Chicago did the Pullman Company operate at that time?

A. They were operatiug the Chicago and North West, the Chicago and Alton, I think; and I think the Chicago, Burlington and Quincy, if I am not mistaken.

Q. How about the Pacific Coast lines?

A. The Union Pacific and Central Pacific.

Q. Was there any transcontinental line, any line reaching the Pacific coast, that was not operated by the Pullman Company?

A. At that time there was only one line to the coast, the Central Pacific.

Q. That was operated by the Pullman Company?

A. Yes.

Q. And the Pullman Company also operated the Michigan Central?

A. Yes, sir; east and west of Chicago.

Q. You may state what the reasons were which you assigned to Mr. Scott and Mr. McCullough in connection with your recommendation of a change of the service on the Pennsylvania lines?

(Objected to by Mr. Prichard as immaterial and not evidence.)

1203 A. Because they were better equipped. I stated to him that they were more solidly built and gave better satisfaction in every way; that the service was much better; that is, in other words, the travel—what I looked at was the travel—all wanted to have a Pullman car; everybody wanted a Pullman car. If the line did not run a Pullman car there was a great drawback.

Cross-examined by Mr. PRICHARD:

Q. In 1869 and 1870, what sleeping cars were run on the New York Central?

A. I think it was the Wagner; I do not know, but they run a very fine car.

Q. And what sleeping cars were run on the New York, Lake Erie and Western in 1869 and 1870?

A. That I could not tell you: I know the cars were fine; Gould and Fiske, I think, built these cars; they were very fine; I do not know whether they were under the Pullman patent or not, but they attracted a great deal of travel.

Q. It was a separate sleeping car company, substantially owned by Barr & Sanderson, was it not?

A. It seems to me there was; I am not sure about that.

Q. In 1869 and 1870, did the Pullman cars run to the Atlantic coast over any line?

A. I think I went through to the coast on the first dining car that Pullman run; I went through to Sacramento on it.

Q. I do not mean the Pacific coast; I mean the Atlantic coast?

1204 A. I do not know of any cars that Pullman ran, except over the Michigan Central with the New York Central; I think his cars ran through to New York.

Q. Is it not a fact that the Wagner cars were run on the New

York Central, that the Wagner and Pullman interests were hostile, and the Pullman cars were not allowed to run over the New York Central to New York in 1869 and 1870?

A. That may have been the case, I do not know. I know the Michigan Central sent out the finest cars east-bound, Pullman cars, that they had the finest cars built.

Q. They ran over the Michigan Central?

A. Yes.

Q. But, I believe, it is not the fact, and you do not mean to say that the Pullman cars went over the New York Central?

A. No; I never said that.

Q. So that, although passengers could go in Pullman cars east from Chicago, they could not get to the Atlantic coast in the same cars?

A. I do not know whether Mr. Pullman—I think for a time he had the privilege of running a through car, but that was broken off when there was some difference about patents; but I think, for a time, Mr. Pullman ran his cars over the Michigan Central, and, on a certain train he ran through to New York.

Q. When, and how long, was that?

A. I am not certain about that, but that is what I think, until there became a coldness between the two companies on account of the patents, and then I think he was cut off at Buffalo.

1205 Q. Did not that coldness exist at the time of the lease of the Central Transportation Company by the Pullman Company?

A. That I am not quite sure on.

Q. When were these fine cars put on the Erie road? I mean those sleeping cars you were speaking of?

A. They were put on shortly after the Gould-Fiske administration.

Q. About what year?

A. I could not exactly tell you the year.

Q. Before 1870, I suppose?

A. Yes; those cars were on there—I think I could tell you if I knew what time Gould took hold of it. I think it was about a year after Gould got possession of the road that they put the cars on.

Q. Can you give us any approximate idea of when they were put on, between 1865 and 1870?

A. I could not tell you when they were put on. I know they hurt our travel very much.

Q. There were four cars that Gould and Fiske put on?

A. Yes, four very fine cars.

Q. I think you said the New York Central put on fine cars?

A. Yes, Wagner was improving his service daily, building new cars. I frequently went up to the New York Central depot to see the new cars. I would occasionally hear of a new car, and went up to look at it and went through it.

Q. Do you recollect about when that was done?

A. Every now and then I would hear of a car on exhibi-

1206 tion in the depot. I went up several times to see the new

cars they were putting on. Of course, I was very much interested at the time. But I could not actually give you any date. I know they were improving their service all the time.

Q. Did you know that in 1869 the Central Transportation Company had some new cars built, some of them by the Pennsylvania railroad?

A. I was appointed general western agent of the Pennsylvania railroad in 1869, after the lease of the Fort Wayne to the Pennsylvania road. I think that I took no active part or paid any attention to what was done East. I was preparing to move to California. I left in 1869 for the coast.

Q. Then the complaints you speak of were before 1869?

A. Yes, and after.

Q. Then there was an interregnum between the complaints, when you went West.

A. Yes; I went West; I do not know anything about the cars built in 1869; I think I went in the early part of 1869 to the coast, and consequently was not aware of the cars.

Q. Did you know the Central Transportation Company had been from time to time building new cars, prior to 1869?

A. Yes.

Q. When did you come from the West and again make complaints?

A. I made complaints in writing to Thomas A. Scott.

Q. When—after you returned from the West?

A. I made them from California.

1207 Q. And they extended along over what period?

A. All the time I was on the coast there, and I was there during 1869 and a part of 1870.

Q. Up to what point in 1870?

A. I could not exactly tell you that, because I came East again several times and returned again. It is pretty hard to remember exact dates.

Q. But you finally came East in 1870, gave up the position?

A. Yes, I resigned.

Q. You then took what position?

A. General eastern passenger agent of the New York Central road.

Q. When you took the position of passenger agent of the New York Central there were no Pullman cars running over the New York Central, were there?

A. No, sir.

Q. Do I understand you to say that Pullman cars were running on all the western lines west of Chicago?

A. Yes, on the principal lines. Pullman was building as fast as he could, but he probably had not the full complement of cars. But he had a contract over nearly all the western lines, and was turning them out just as fast as he could build them.

Q. The Union Pacific ran some other sleeping cars besides the Pullman, did they not?

A. Not to my knowledge.

Q. Are you sure of that?

A. The first contract made with the Union Pacific road
1208 was made of a joint character. I believe the Pullman people built their cars and agreed to give the Union Pacific a portion of the earning power of those cars. I remember when the first contract was made. I think Gould and Fiske got charge of the Erie somewhere along about—I think probably they had control at the time Fiske was shot. I think they had control of the road for three or four years, probably five years. I think Mr. Gould came in there and got control of the Erie in 1868.

Q. And he put on those four cars within a year thereafter?

A. Yes. It seems to me he had control of the Erie road before that. They were in control long before that. I think history will show you that about 1865 Mr. Gould was in control of the Erie railroad. Those cars were there and I competed against them. I left here in 1869, and I know I had a big fight with them for three or four years.

Q. Can you fix about the number of years that you paid this extra commission to agents?

A. Well, in fact that became a fixed fact from the time I took hold.

Q. Which was when?

A. 1861; the Pennsylvania railway was handicapped all the way through. The latter part of 1860 I came here, and it took me a year and a half before I got thoroughly located in New York.

Q. You think it was some time in 1861 or 1862 that you commenced to pay extra commissions to agents.

A. I cannot say what time it was.

Q. I want your best recollection.

1209 A. I cannot say that, because that is a pretty long while for a man to remember back.

Q. Was it soon after you took the office that you commenced paying the extra commission?

A. I suppose it was probably a year or two after that.

Q. That would be 1862 or 1863?

A. Somewhere along about 1862, when I discovered we could not get our share of the business.

Q. With what sleeping car companies reaching the Atlantic coast were the sleeping cars operated by the Central Transportation Company over the Pennsylvania lines in competition?

A. I do not understand that.

Q. In 1862 and 1863, with what sleeping car companies operating cars to the Atlantic coast were the sleeping cars of the Pennsylvania line in competition?

A. The Michigan Central.

Q. Did that reach the Atlantic coast?

A. No.

Q. I only want those reaching the Atlantic coast.

A. The Wagner and the Erie outfit, whatever it was. I do not know whether it was under Pullman or not.

Q. Don't you know it was not under the Pullman?

A. No, I do not.

Q. What character of sleeping cars, in 1862 and 1863, were being run on the New York Central road?

1210 A. You must not pin me down to the year and the date. But, during my competition with them, their cars were far superior to the cars run on the Pennsylvania railway. Now, as to dates, I cannot date back thirty years ago and carry it all in my head. I will say, at the time I was in competition with the New York Central and Erie, that our cars were not up to the times, compared with the cars on the Erie and New York Central.

Q. Now, what was the general character of the sleeping cars operated on the New York, Lake Erie and Western, prior to Gould and Fiske getting control of that road; do you know?

A. I do not remember that.

Q. Do you know the general character of the Wagner cars operated on the New York Central prior to 1865?

A. Yes, I went up and looked at them.

Q. How did they compare with the Central Transportation Company's cars; just give the points of difference?

A. As far as I could see, they were more solidly built, and gave entire better satisfaction to the people. They were not shook all up with a light tinder-box; they were solid. You would get into them and you could go to sleep. The other cars on our line were shaky, lightly built, poorly constructed, and, in going around the curves on the Pennsylvania road there was no solidity about them. I cannot explain it any further than that. Don't confine me to dates, because I can't give dates. If I could have got the manuscript of a report I wrote several years ago, the history of this thing, it would refresh my memory.

1211 Q. How came you to write a manuscript several years ago about it?

A. I was asked once about it.

Q. By whom?

A. I was asked to make a statement, and I made a statement; I do not know where it is now.

Q. Who were you asked by; who asked you to make a statement?

A. The Pullman Palace Car Company asked me to make a statement of my knowledge of the character of the cars at that time.

Q. Was that put in the form of an affidavit?

A. No; I just simply made a statement at that time. At that time my mind was very fresh on it.

Q. Then, as I understand, you do not wish to be understood as drawing a comparison between the cars of the Central Transportation Company and the cars run on the Erie road and New York Central road as early as 1865?

A. Yes; I do; that is the time I was in competition with those people; I say I was there from 1861 until 1869, and that during that time that competition occurred.

Q. Do I, or do I not, understand you to have enough recollection of the cars to be able to draw, in your own mind, a comparison be-

tween the cars run in 1865 on the New York Central and on the Pennsylvania lines?

A. I can answer you that by saying that during the time I was with the Fort Wayne road in the East, the whole complaint of the general traveling public was that we did not furnish proper sleeping-car accommodations.

1212 Q. It is true, is it not, that from 1861 and 1862, down to 1870, the manufacture of sleeping cars was in a state of very rapid development?

A. I know they were improving the service.

Q. Is it not true that both the Wagner Company and Central Transportation Company were, during that period, constantly building new cars, each one of which was supposed to be an advance over or ahead of the cars theretofore built?

A. That was the general impression.

Q. And is it not true that sometimes the latest car of the Central Transportation Company might be ahead of the latest car of the Wagner, until it is excelled by a new car built by Wagner subsequently?

A. Yes, as far as silver plate and all that kind of stuff was concerned. The Wagner never went into that gewgaw business. The Central Transportation Company went into the silver-plate business without giving solidity to the car at all.

Q. How did the Wagner compare with the Pullman?

A. I do not think the Wagner was up to the Pullman standard at all.

Q. So that you would, in your own individual judgment, put the Central Transportation Company at the foot, Wagner next to them, and the Pullman next above that?

A. Yes.

Q. Where would the cars running on the New York, Lake Erie and Western come in?

1213 A. The cars built on the New York, Lake Erie and Western were cars that I think had larger berths, much larger berths, and more space for people than either the Pullman or the Wagner. Those four cars, the Evening Star, Morning Star, Jay Gould and Jim Fiske, they were roomy and large berths, where you would feel as if you were going to bed in a hotel.

Q. They were a different shape of cars from any others?

A. They were larger in the berth, more elaborate.

By Mr. ISHAM:

Q. What was the gauge of the Erie road as compared to the others?

A. I do not know whether they changed the gauge at that time, but it was a six-foot gauge, and they could build larger cars. I forget whether the gauge was changed after that or before.

By Mr. PRICHARD: How about the other sleeping cars on the Erie road outside of these four cars?

A. I paid very little attention to those. The four cars were the type that advertised the lines.

Q. So that, in point of fact, the latest improved car that was put on a through line did to a certain extent make the standard of the traveling public, and they demanded facilities up to that on every road, did they not?

A. I cannot say that, but the western people coming off of those western lines west of Chicago always wanted a Pullman car invariably, and wanted to go by the line with which they could connect with the Pullman cars.

1214 Q. But prior to the lease of the Central Transportation Company to the Pullman they could not go by any line?

A. Yes, they could go to Buffalo and take the Michigan Central.

Q. But east of Buffalo?

A. They had to take the Wagner.

Q. Then prior to the lease of the Central Transportation Company to the Pullman, a passenger going to the Atlantic coast could not take a Pullman car that would take him to the Atlantic coast?

A. As I said before, I think until the trouble between Wagner and Pullman that Pullman ran Pullman cars on lines through to New York.

Q. You do not know how long a period that covered?

A. No.

Q. I think you also said that at the time of the lease of the Central Transportation Company to the Pullman you said you thought that had stopped?

A. I did not. I do not know what time that trouble occurred between the Pullman and Wagner Companies, but I know they were working in harmony, and Pullman had a right to run on certain trains to the Atlantic coast on the Michigan Central and New York Central roads.

Q. Then I will put my question in the form, that if it be true at the time of the lease of the Central Transportation to the Pullman Company the relations between the Pullman Company and Wagner Company were such that Pullman was not allowed

1215 to run his cars over the New York Central, if that be true then it is also true, is it not, that at the time of this lease of the Central Transportation Company to the Pullman Company, the traveling public could not reach the Atlantic coast on Pullman — no matter how much they wanted to?

A. I do not think the trouble between Wagner and Pullman originated at that time.

Q. Then it is your present recollection that at the time of the lease of the Central Transportation Company to the Pullman Company, Pullman cars were running over the New York Central road?

A. I think they were, on certain trains, I do not know. I am not quite certain about that.

Q. You became the agent for the New York Central, when?

A. In 1870, I think.

Q. And they were not running then? Pullman cars were not running over the New York Central then?

A. I am not quite sure about that. I will tell you why I am not

sure. When I took hold of the New York Central road, Mr. Vanderbilt sent me South. I was not in active service for two or three months, two months. Then he sent me to New England. I made report from the South, and report from New England. My report brought on that railroad war. I advocated the principle of the Vanderbilt system, making the same rate from Boston as New York, against the Pennsylvania line, which brought on that railroad war. At that time Colonel Hammond, of the Union Pacific, and C. P. Huntington waited upon me and asked me to take charge of
1216 the Union Pacific road. I called on Mr. Vanderbilt—I had not time to get in the harness hardly, and consequently paid very little attention. I was constantly in the field making reports to him about what was necessary to be done. They called on me and asked me to take charge of the Union Central Pacific, and I called on Mr. Vanderbilt, and I told him he could get a much cheaper man than I, unless he would give me discretionary power. He said he could not do it as long as his father lived. I told him that looked like waiting for dead men's shoes, and I told him he would have to accept my resignation unless he would give me discretionary power to meet the competition. He says "Don't make a move until I see father." But I had a meeting at the St. Nicholas hotel with Colonel Hammond and C. P. Huntington, and when I got down there I closed with them and wrote my resignation. After that I never spoke to Vanderbilt. Consequently I have no experience on the New York Central at all.

Q. I wish you would state all the facts which make you think Pullman cars were running over the New York Central road in 1870. The reason I ask you to do that is that your statement is contrary to what I understand from the other witnesses.

A. I am not prepared about dates; if I had known that was to be a question I could have found out just exactly all about it. At the New York Central depot I could have found the dates and everything, but I am not prepared for any dates at all.

1217 Q. You have said that it is your recollection that Pullman cars were running over the New York Central as late as 1870?

A. I have said that they were running in harmony, Wagner and Pullman, by which Pullman reached the Atlantic coast with his cars, over the New York Central line, but up to what date I cannot say; on certain trains, fast trains.

Q. You have no recollection as to whether that state of facts existed as late as 1869 and 1870?

A. I could not give you the dates.

Q. You have not any recollection that would enable you to say whether that state of facts existed in 1869 or 1870, or not?

A. No.

Q. To return to the original question, if it did not exist in 1869 and 1870 then there was no means by which the traveling public would reach the Atlantic coast in Pullman cars. Is not that true, if the Pullman cars were not running over the New York Central?

A. I think in the interim that Pullman made a contract with the

Erie, and I think that he took charge of the sleeping-car service on the Erie, and the Erie was running Pullman cars in 1869 and 1870.

Q. Will not you give all the facts which lead you to make that statement, because that is also contrary to what I understand from the testimony to be the fact?

A. The only thing that puts that into my mind is the competition I had to contend with.

1218 Q. So that you think because you had to meet the competition it must have been the same way in 1869 and 1870, that the Pullman cars were reaching the Atlantic coast?

A. No, not necessarily. The conditions were entirely different those days from what they are now. There were not any through cars through to Chicago. Everybody was dumped out at Pittsburgh and Buffalo. The great thing was to get to Buffalo and take a Pullman car on the Michigan Central road. There were no cars running through. They did not think of running a car through to Chicago. Everybody was dumped out at Pittsburgh and Buffalo.

Q. How far were the through cars run west of Chicago?

A. I think they were on nearly all the lines. They were not fully equipped, but I think all the fast trains had Pullman cars.

Q. How far would a car go starting west from Chicago; how far would it run through without breaking?

A. To the Mississippi river.

Q. So that from Chicago to the Mississippi river they did run cars directly through without change of passengers?

A. Yes.

Q. Is it not true that the reason why through cars were not run from Chicago to the Atlantic coast was that the Pullman cars could not find entrance on either the Erie, the New York Central or the Pennsylvania lines, by reason of the prior occupation of those lines by other sleeping car companies?

1219 A. I think you will find that the Pullman had control of the Erie and had its cars on there in 1869 and 1870; I think there is no doubt about that. I am pretty positive he ran his cars and had control of the sleeping-car service of the Erie railroad in 1869 and 1870.

Q. That is your recollection?

A. Yes.

Q. I have asked you to state all the facts which led you to make that statement, you have stated one, to wit: the competition. Are there any other facts that you can think of which influenced you to make that statement that Pullman ran his cars over the Erie in 1869 and 1870?

A. I say that is what I think. I don't say that as a positive fact. In fact it has escaped my memory. I told you to start with that I was not sure as to dates. If you would give me a little time to refresh my memory and look over the records I could tell you exactly.

By Mr. ISHAM: You have stated again and again that you do not remember specifically what cars were running, that is, who conducted the sleeping-car service on the Erie road, and that you do not remember certainly whether the Pullman cars were running on

certain trains or not over the New York Central road, or whether the Pullman cars from Chicago reached the Atlantic coast or not in 1870?

A. Yes.

Q. That your memory on that is defective?

A. Yes.

Q. Does that qualify in anywise the force of your state-
1220 ment that whatever the administration was of the cars over those lines, you found they constituted a formidable and expensive competition with the Pennsylvania lines?

A. Yes, sir; undoubtedly so; it was not.

Q. Speaking of those four cars on the Erie line, and of their being so capacious, is it not true that the gauge of the Erie line at that time was a six-foot gauge, and those cars were built of extraordinary width, and were about eight feet and a half wide?

A. That is my recollection, yes. sir.

Q. Those four cars, the Fiske, Gould and Morning and Evening Star, were quite different from any other sleeping cars in the country, were they not, at that time?

A. Yes, sir; they were more spacious, more roomy, large berths.

Q. You were asked with reference to or in what respect the Wagner cars of that time on the Central road, in competition with the Pennsylvania, were superior to the Central Transportation Company's cars. You may state whether or no it is not true that they were built upon a different and better model?

A. I can answer that question by stating that the cars were built more solidly. You did not feel the motion of the train when you rode in one of them. Their inside finish was plain, but solid and comfortable. Wherefore the Central Transportation Company was all show and no comfort. That was about it, the way I
1221 looked at it, and I guess I voiced ninety-five per cent. of the traveling public at that time. Of course, it is a long way back, but if I had known you wanted to examine me on that I could have brought dates and everything.

CENTRAL TRANSPORTATION COMPANY }
vs.
PULLMAN'S PALACE CAR COMPANY. }

Testimony of James D. Layng, of New York, on Behalf of Cross-defendant.

Direct examination by Mr. ISHAM:

Q. Mr. Layng, will you be good enough to state your name, residence and occupation?

A. James D. Layng, No. 931 5th avenue, New York city. I am vice-president of the Cleveland, Cincinnati, Chicago and St. Louis Railway Company, and general manager of the West Shore railroad.

Q. You were connected with the Pittsburgh and Fort Wayne railroad, were you not, in 1869 and '70?

A. I was.

Q. What was your relation to that road; in what official capacity?

A. I was from 1865 until 1871 superintendent of the Eastern division, from 1871 until 1874, assistant general manager, and from 1874 until 1881, general manager.

Q. You were acquainted with the sleeping-car equipment of the Central Transportation Company that was operated upon the
1222 Pennsylvania lines during the year 1869 and down to the year 1870?

A. I was.

Q. You were on the road at the time of the transfer of the administration of that sleeping-car service from the Central Transportation Company to the Pullman Company?

A. I was.

Q. Do you know what the conditions and circumstances were which led to and caused that change to be made; if so, kindly state all you know.

(Objected to as immaterial.)

A. The equipment in use by the Central Transportation Company was of a very inferior kind, with the exception of a limited number of cars which had been placed upon the line new from time to time, the larger portion being of the old style of cars that had grown up with the establishment of a sleeping-car service.

Q. Well, this equipment being then such as you have described, what was the purpose sought to be accomplished by the change in the administration of that service which was made at that time?

(Objected to because it is not shown that witness had anything to do with that change and because it is immaterial.)

A. Being in the general office and in constant communication with the general manager of the Pennsylvania Company's lines, Mr. J. N. McCullough, I had repeated conversations with him, advising
1223 him from to time of the bad service and the low grade of sleeping cars, and was probably as near to him as any other officer of the system. He kept me advised from time to time of his intention to make a contract with the Pullman Company if he could, so that, while not a direct party to the negotiations, I was constantly advised of the arrangements as they progressed.

Q. What was the character and the condition—I wish you would state with as much particularity as you can—of the sleeping cars which made up the equipment of the Central Transportation Company at that time?

A. Well, of course at this long distance I could not go into any detail—at the time I was familiar with every car and its condition—so that my recollection must necessarily be general, as to the condition of the equipment as a whole.

Q. Give your best recollection.

A. All of this equipment, as I have said in a previous answer, was of the very old style, with the exception of a very limited number of cars that Mr. Woodruff had placed upon the line within a few years prior to the transfer.

Q. Were those cars that you last spoke of the cars that were known as the silver palace cars?

A. They were.

Q. In what respect did those cars differ in their general construction from the earlier ones?

A. Well, they differed just as the entire equipment of the country excelled in its character that previously constructed. The improvement in the silver palace cars was not any greater than had been obtained in the ordinary coaches of the road. The
1224 standards were merely higher from time to time. The silver palace cars were probably nearly as good as the best of their kind.

Q. Well, were they of the same general kind as the earlier construction?

A. Oh, no, very different, very much better style of cars, and of course all of the improvements that they possessed were put upon them as they were built.

Q. How were those cars in the matter of decoration, etc., different from the other cars?

A. Well, they were called silver palace cars; they were filled with different ornamentations silver plated such as today would not be recognized, they would be called in very bad taste, but they were a very showy car for their day.

Q. To what extent did that sort of ornamental decoration enter into the expense of such cars?

A. Well, it would add a good deal to the expense of the car; I should say that the decorations, such as we would not have in the cars today, but were put upon these cars, would cost at least $1,000 a car.

Q. How many of those cars were there, Mr. Layng?

A. That I cannot tell you; I know there was a very small number of them.

Q. What was the age, so far as you can recall, of the rest of the equipment from time to time added in the service running on those lines?

A. When I went there in 1864—I was there a year before I was superintendent, was with Mr. McCullough, as his private secretary, from April, 1864, until April, 1865, when I took the super-
1225 intendency of the Eastern division, so that I was familiar with the cars from April, 1864. The most of the cars were there when I went there. Some new cars were added from time to time, and then some years afterwards the inauguration of this so-called silver palace line brought this new style of car into use. I think that a very large proportion of the cars were there prior to 1864, although it is almost impossible for me at this date to tell.

Q. What was their interior equipment; how were the berths arranged?

A. Most of the cars, as near as I can recollect when I went there, were the old three-deckers.

Q. Well, explain what that was.

A. Well, that was a car with a lower berth and then two little shelves up above. That was the original Woodruff car.

Q. And those were still in operation?

A. Well, at one period, I cannot state just now when, these old berths were torn out, and the new modern—what we call the Pullman berths—were put into these same cars. They were changed, using the old car-bodies.

Q. How did the sleeping-car equipment of the Pennsylvania railroad in 1869 and '70 compare with that on competing lines, say, for example, with the Erie and New York Central?

A. I had no familiarity with the sleeping cars on the Erie or New York Central at that time. My comparison—and so also Mr. McCullough's—was made with lines running into Chicago. In our frequent visits to Chicago we saw the Pullman cars that were
1226 in use on the western lines; that was where our ideas of a higher standard were obtained. We saw the same cars on the Michigan Central, which then had probably the finest equipment that there was on any of the lines running out of Chicago.

Q. Did you know at that time, and have occasion to observe any effect upon the passenger traffic of the Pennsylvania lines growing out of the condition of this sleeping-car equipment and its inferiority to that of competing lines? If so, what?

(Objected to as immaterial.)

A. My familiarity with the matter was not of such a nature as could be called evidence. I knew in a general way that other lines had equipment vastly better than ours, and, as I said, it was the desire to have the equipment of the Fort Wayne road and its connection east, of course, fully up to the standards adopted by the other lines.

Q. Did you make any representations yourself upon that subject?

A. Well, I should say so, on a very great number of occasions.

Q. Did you make any representations on that subject yourself, or in connection with Mr. McCullough, to the officers of the Pennsylvania Railroad Company?

A. I did not; all communications of that kind would be made by him; I may have talked about it, but it would be nothing official.

Q. Did you make any comments on that subject in your annual reports to the roads that you were connected with?

1227 A. No; I made no annual report as superintendent of the Eastern division. The annual reports were made entirely by the general superintendent, first of the old Pittsburg, Fort Wayne and Chicago, and then by the general manager of the Pennsylvania Company.

Q. Do you know of any reports upon that subject to the officers of the roads with which you were connected?

A. I do not.

Q. What was your experience in railroad service prior to the

connection of which you have spoken with the Pittsburg and Fort Wayne road?

A. I had been familiar with almost every branch of the service in construction and operation from 1849, until I took charge of the Fort Wayne road.

Q. Did you in the course of your railroad experience have occasion to have knowledge of the construction of cars and their cost?

A. I had entire charge of every branch of the service.

Q. What, in your judgment, at the time the sleeping-car service was transferred from the Central Transportation Company to the Pullman Company was the average value of these cars making up the Central Transportation Company equipment at that time?

A. Well, the best answer I can give is based on very clear recollection. At some period subsequent to the contract with the Pullman Company, it was deemed advisable to change the character of the compensation for the service from what we call a maintenance service to a mileage basis. In order that you may have this clearly before you, I would state that the contract with the Central Transportation Company, as near as I can now recollect, and subsequently with the Pullman Company, was that the railroad companies should maintain these cars—the outsides of the cars and everything except the bedding and the upholstering. With the introduction of the improvements of the Pullman service we endeavored from time to time to change these cars from the maintenance basis to the mileage basis as I have described, and in order to do so the settlement for the value of the car had to be made with the Pullman Company, either they taking the car away, as they did with a large number of them, and as near as I can now remember, the railroad company taking a few of them and tearing them up. After a great deal of negotiation between Mr. Pullman and myself upon this subject, I agreed to allow him $5,000 for these cars—these old Central Transportation Company cars—we to take them and take them off the line and he would replace them with his modern car. I cannot now tell you to what extent this was done, but whatever of those old cars were so transferred we paid him $5,000 for and took the car, and I considered that a good deal more than they were worth.

1228

By Mr. PRICHARD: You took the car or he?

A. We, that is the railroad company. I cannot state at this late day how many of these cars were so taken, but my recollection is very distinct that a sufficient number of them were so taken as to establish a price for them at that time.

Q. The object of that arrangement then Mr. Layng was to get those old cars off the line?

A. There were two objects: The first to get Mr. Pullman to take these cars off the line and replace them with his modern cars, and the second that the railroad company should be relieved of the responsibility of running the cars on the maintenance basis, in other words to throw the entire responsibility of the maintenance of a modern equipment upon the Pullman Company.

1229

Q. To what extent did the sum allowed for those cars include an

allowance for an obligation of the railway company to maintain and repair those cars which had not been performed?

A. Well, it would necessarily include all of the obligation of the company as to maintenance which had not been fulfilled up to that date.

Q. Was there not at that time a claim on the part of the Pullman Company for a considerable sum as due from the railway company upon each of these cars for maintenance or repairs that they were holden to make which had not been made, was there not a considerable part of this $5,000 made up of this element?

A. There must necessarily have been a considerable amount of this money allowed for the responsibility of the railroad company for maintenance not performed, but the railroad company claimed that they were only obliged to maintain the car on the same standard in which it had been received, so that if this maintenance was made the car would still be the old obsolete form of sleeping car.

Q. On the other hand, did the Pullman Company acquiesce in this view of the railroad company as to that limit of its obligation?

1230 A. The Pullman Company agreed to relieve the railroad company of all obligation whatever with regard to these cars for the round sum of $5,000. This included the value of the car and all of the obligations of maintenance unperformed.

Q. In what respects, Mr. Layng, were the Pullman cars superior to those of the Central Transportation Company which they superseded?

A. Well, the best answer I can give you to that is that the standards adopted by the Pullman Company in 1870, and under which standard they equipped the new line, were just as much superior to the old standards of the Central Transportation Company as the Pullman and Wagner cars of today are in advance of those of the Pullman Company in 1870. In other words they had reached the advanced standard of the day.

Q. The cars of the Central Transportation Company, how did they at that time compare in point of size, weight, strength of construction and durability with the cars which the Pennsylvania lines had come in the development of the sleeping-car service to want upon their lines?

(Objected to as immaterial.)

A. Well, that is technical, Mr. Isham—quite an involved question.

Q. Well, I am referring to the relative size of the cars, weight and construction?

A. There was no very great difference in the size of the cars. They were, however, built with much stronger frames, which were the Pullman standard—that is, the Pullman cars were. I really cannot answer that question. To tell what they wanted is a very difficult question.

1231 Q. What was the character of those Central Transportation

cars as compared with the new Pullman cars in respect of their strength of construction and durability?

A. They were very much inferior in strength of framing, and you understand by that I mean the Pullman cars with which we compared them, as I have described in previous answers, which we saw on the lines managed by the Pullman Company entering Chicago. They were not only inferior in strength but in finish and in the general style of their equipment.

Q. What would you say in 1870—the winter of 1869 and '70—when this change was made, would have been the average lifetime and durability of the cars making up that Central Transportation Company equipment at that time. How long would those cars have been capable of running on the Pennsylvania lines and performing their service there?

A. Well, that is a very difficult question to answer. At the time when I was familiar with each one of them I could have given you a very close estimate as to how much longer those cars would have run. I know a large number of them ought to have been condemned at once; there were some of them of course, a number of them that were very fair cars of their kind.

Q. Was their kind such, and their original construction such that they would have been susceptible of being made over into the higher standard car of the Pullman Company or its equivalent?

1232 A. Not by any means. It would have cost more to have rebuilt those cars to the Pullman standard of that day than it would to build a new car. You would have had nothing left but the frame.

Q. You spoke of these cars as being old and obsolete; explain more fully what you had in mind by the use of those expressions, Mr. Layng.

A. What we would technically call an obsolete standard is when something better has been brought into general use. These cars, with the exception of the few cars known as silver palace cars, were all of that character. You can understand, of course, that the same principle applies in every branch in which there may be improvement upon a railroad, that is, when a new and higher standard has been demanded by the public and adopted, the older standards are called obsolete, and are abandoned.

Cross-examination by Mr. PRICHARD:

Q. Mr. Layng, I call your attention to the itemized statement of the amounts received by the Pullman Company from the Pittsburg, Fort Wayne and Chicago Railroad Company for Pullman cars put out of service, which statement is annexed to the sworn answer of the Pullman Company, and shows that various amounts, running from $11,982.76 for one car down to $6,000 for one car, were paid by the Pittsburg, Fort Wayne and Chicago road. With your recollection refreshed by that statement, will you not revise your answer as to the amount the Pittsburg, Fort Wayne and Chicago road paid to the Pullman Company?

1233 A. Yes, that refreshes my memory very clearly. The statement that I made was exactly right so far as it went, but I had made all of these settlements with Mr. Pullman on the basis of $5,000 for these cars, which we took and tore up or scrapped them. Now at a subsequent date Mr. Cassatt, I think it was, but I will say the officers of the Pennsylvania railroad, agreed to allow them $6,000, and Mr. Pullman, through the efforts of the Philadelphia office, was enabled to make me make the same allowance, which I did under protest, and you will observe that nearly all of the cars settled for on the Fort Wayne road were on that basis.

Q. The statement does not so show; it shows a larger number settled for at $7,000.

A. I do not remember any higher figure than $6,000. There may have been some special reasons why these cars were more valuable; they may have been some of the silver palace cars.

Q. Mr. Layng, Mr. Cassatt has testified that the arrangement between Mr. Pullman and the Pennsylvania railroad was $7,000; are you sure about your $6,000?

A. I am very sure; that is, to the extent that I stated; for these cars that we took from the Pullman Company ourselves we commenced to pay him $5,000, and afterwards took them at six. Now, the $7,000 arrangement may have been where we subsequently changed from the maintenance to the mileage basis.

Q. Is that the only way in which you can account for the fact that eight of the cars were settled for at $7,000, while only
1234 five were settled for at $6,000, and one of them was settled for at over $11,000?

A. The $11,000 was not paid by the Fort Wayne road, but by the Pennsylvania railroad. If you observe, car 85, assigned to the Fort Wayne road, was settled for by the Pennsylvania railroad at $11,982.76, and the car may have been destroyed in a wreck or burned.

Q. It does not say so here.

A. Well, no, except from the fact that while it was a Fort Wayne assigned car, it was settled for by the Pennsylvania railroad, so that it would be very clear to me that there was some other reason for its being settled for.

Q. Is it not a fact, Mr. Layng, that instead of paying Mr. Pullman an additional thousand dollars for cars already taken by your road at $6,000, what happened was this: that after a certain date all cars taken by your road were settled for at $7,000?

A. No; my recollection is only clear as to the price put upon these cars where we took them. There is something else in it that I cannot remember with regard to the settlement for these cars at a higher basis from the fact that they were withdrawn by the Pullman Company from service; that statement shows me very clearly that these cars were taken by the Pullman Company. In other words, they agreed that if they were allowed $7,000 that they would withdraw the cars from service, accepting all the responsibility for them, and replace them with their modern car.

Q. Who did the car belong to?

1235 A. My recollection is that the Pullman Company took the cars and put them in other service, or, at any rate, took them away from ours. In other words, they fixed the value of the car to them.

Q. Now, Mr. Layng, I understand you now to say that in the case of the eight cars taken at $7,000, Mr. Pullman received from the Pittsburg, Fort Wayne and Chicago railroad $7,000 for each car, and kept the cars; is that correct?

A. Yes; and replaced it—I do not say that, because I do not accept this; I do not know it.

Q. That is, assuming the statement annexed to the Pullman Company's answer to be true, that is your understanding of it?

A. Well, I do not know; my recollection is very clear that I had a controversy with Mr. Pullman——

Q. But your explanation about the $5,000 would only apply—if that statement is correct—would only apply to those put down as $6,000 cars?

A. My recollection on that is very distinct. $5,000 was exactly what I agreed with Mr. Pullman to pay him for those cars, and I am inclined to think now, as I told you before, that the advance to $6,000 was forced upon me by the lines east of Pittsburg having agreed to pay the same price.

Q. But that explanation applies to the cars you see in that statement as $6,000, and not to the cars that are set down as paid for at $7,000?

A. Well, I do not remember. I think I know what that $7,000 car means, but it is not evidence. I can only state my recollection; it is a good many years ago; I think the officers of the Penn-

1236 sylvania railroad will bear me out that it was a premium paid Mr. Pullman to take those cars off the line; as I said, I want it clearly understood that my recollection is just as I stated; the Pullman Company insisted on running that equipment and it was just simply unendurable, and my recollection is that the officers of the Pennsylvania Company were bound to get rid of it, and they offered Mr. Pullman a premium, and it may be that I was a party to it.

Q. Then I take it for granted Mr. Layng that Mr. Pullman continued running the Central Transportation equipment for a considerable number of years after the lease to the Pullman, and does your recollection correspond to what appears to be shown by that statement that some of those cars continued in service as late as 1882?

A. I cannot tell just what date, but they did continue to run.

Q. Why if the Pennsylvania railroad and the Pittsburg, Fort Wayne and Chicago road were anxious to have Pullman cars, did they not insist upon an entire Pullman service in place of using the equipment of the Central Transportation Company?

A. Well, it would have been practically impossible to have replaced that equipment at once; my recollection is that there must have been over 100 cars.

Q. But why was it necessary after some years to bribe Mr. Pullman to replace them with Pullman cars?

A. Well, that is your word, I did not use it.

Q. Well, I mean nothing derogatory in this; I mean as you stated an inducement.

1237 A. Why, simply because they wanted to offer an inducement to Mr. Pullman to invest a larger amount of capital to put his high-standard cars in the line.

Q. Is it not a fact Mr. Layng that the contract with the Central Transportation Company and the subsequent contract with the Pullman Company which was made with that company when it leased the Central Transportation Company's assets, gave the Pullman Company the right to continue running this equipment?

A. Well that contract would show for itself.

Q. So that the result of the lease by the Pullman Company of the Central Transportation Company was not to substitute at once Pullman cars for the Central Transportation Company cars, but to substitute them gradually?

A. I should say so.

Q. When you speak of the inferiority of the Central Transportation Company cars you compare them, do you not, with the Pullman cars? I think you have so stated.

A. Yes.

Q. You have no particular knowledge of the cars in use by other sleeping car companies.

A. I did not know anything except the Pullman and Central Transportation Company cars.

Q. How long had the traveling public been complaining of the inferiority of the sleeping-car service prior to '69 and '70?

A. Well, that is a pretty difficult question to answer. Our general passenger agent was complaining about it every day.

1238 Q. Is it not true that the sleeping-car service was in a very rapid state of development, and that with each new car that was put into service the traveling public complained of the cars that were inferior to it?

A. That was always the case, and is today.

Redirect examination by Mr. ISHAM:

Q. Mr. Layng, in answer of the Pullman Company, to which Mr. Prichard has called your attention, in that "Exhibit B," which was shown to you, the answer contains the following statement—I am referring to what you said with regard to that price being paid as a measure of the value of the cars. "Exhibit B" shows with as much accuracy as is now possible. * * * "Which of said cars are still in existence, and also as to such of said cars as are no longer in existence the amount of money, if any, received by or on account of said cars on sale or destruction thereof, but respondent says that the amounts so shown as received for or on account of said cars do not indicate the value of said cars in any instance, nor a price received therefor at the disposition thereof, but to a large

degree represent a concession or contribution made by the railroad companies as the result of negotiation with the Pullman Company, and as an inducement to the Pullman Company to consent to the abandonment of said cars from service on the railway lines, and to the substitution of superior and more costly cars in place thereof, made necessary by the improving character of the service and the demands of the traveling public; and in some cases also in-
1239 cludes the equipment contained in cars." What is your recollection as to the truth of that statement?

(Objected to as leading)

A. My recollection seems to be very clear, not having heard one single thing about this case for ten or twelve years, and I should say as I stated in my previous answers that the $7,000 was fixed, if fixed, not upon the value of the car, but as an inducement to withdraw them from the service and substitute his higher grade of equipment.

Q. What would you say as to the substantial correctness of the statement I have read from the answer?

A. From my recollection it was substantially true.

Q. Now, turning to this car No. 85, and the statement in Exhibit B concerning it which shows that it was assigned to the Pittsburg, Fort Wayne and Chicago road, was sold to or settled for by the Pennsylvania Railroad Company—does it not—at eleven thousand and odd hundred dollars; do you, or not, remember that that car was one of the new silver palace cars?

A. I do not remember.

Q. Do you, or not, remember that it was a car that was burned up and was settled for by the Pennsylvania railroad, car, equipment and all?

A. I do not remember, but as I said in a previous answer on cross-examination, I was very clear from this record, assuming it to be true, that the settlement was made by the Pennsylvania railroad for some risk of its own, the responsibility for such risk hav-
1240 ing been transferred from the Pittsburg, Fort Wayne and Chicago line to the Pennsylvania railroad. I may have known all about it at the time.

Q. Do you know what was the cost and about how much capital was invested in the new cars put on the road by the Pullman Company in substitution for the old Central Transportation cars?

A. I do not recollect with sufficient clearness to answer that question. I know, in a general way, that they cost a great deal more than the old standards of the Central Transportation Company.

Recross-examination by Mr. PRICHARD:

Q. As I understand you, Mr. Pullman claimed that the railroad companies were bound to maintain and renew these cars, and to bring them up to the Pullman standard the railroad companies contested that and claimed they were only bound to keep them up to the Central Transportation Company standard. In a settlement of

that dispute he agreed to substitute Pullman cars and the roads agreed to pay him the amounts they did pay him.

A. No, I think not. My recollection of that matter and it is very clear, was that the railroad company conceded that they were obliged to make these cars on the contract with the Central Transportation Company as good as they were when they came upon the line, I am speaking entirely of the Fort Wayne road, as I had nothing to do with the Pennsylvania railroad, but the railroad com-

1241 pany said that if we do that we will simply have a new car of an old standard that really would be of no use for competitive service we have to meet, so that it was agreed that if the Pullman Company would withdraw these cars and put their modern build of car upon the lines equipped from time to time, that the railroad company would allow them this premium for doing so.

Q. After 1870 was the Pullman Company operating the sleeping cars on the Pittsburg, Fort Wayne and Chicago railroad under the Central Transportation Company's contracts?

A. Well, that is a matter of record I cannot answer. I recollect in a general way, but it is not evidence.

Q. What is your recollection, Mr. Layng?

A. As I said, that is simply a question of when one contract ended and the other began.

Q. Well, did the Pullman Company make a new contract with the Pittsburg, Fort Wayne and Chicago road?

A. Well, I do not recollect.

Q. Do you recollect whether there was a new contract?

A. Well, that I do not recollect.

1242 CENTRAL TRANSPORTATION COMPANY
vs.
PULLMAN'S PALACE CAR COMPANY.

APRIL 26, 1894—11 a. m.

Present: Samuel Bell, Esq., the commissioner; Messrs. Prichard and Johnson for plaintiff; Messrs. Runnells and Isham for defendant.

ALEXANDER JOHNSON CASSATT, a witness called on behalf of defendant in cross-bill, having been duly sworn, was examined as follows:

By Mr. ISHAM:

Q. Please state your age, residence and occupation.

A. I reside in Philadelphia; I am fifty-four years of age; at present my occupation is that of farmer.

Q. You were at one time connected with the management of the Pennsylvania Railroad Company, were you not?

A. Yes, sir.

Q. Please state during what period you were so connected and in what capacity?

A. I was connected with the Pennsylvania railroad from 1861

until 1883. I entered the service as assistant engineer in the engineering department and served in the various grades of service. I was resident engineer and division superintendent, and superintendent of motive power, and general superintendent and general manager and vice-president.

1243 Q. What was your connection in 1869 and in 1870?

A. I was superintendent of motive power during 1869, and I was made general superintendent in 1870, I think.

Q. Were you acquainted with the sleeping-car service operated on that road by the Central Transportation Company prior to 1870?

A. Yes, sir.

Q. Did you have knowledge of the change that was made in the administration of that service when the Central Transportation Company was succeeded by the Pullman Company?

A. Yes, sir.

Q. State what the consideration and conditions were which caused that change to be made.

A. It grew out of dissatisfaction with the cars and the service of the Central Transportation Company and a desire to improve it.

Q. In what respects was it desired to improve the condition of that service in its equipment and administration?

A. The equipment was considered inferior to the equipment furnished on other roads, and the service was not considered as good, and the management and administration of the service was not considered as good.

Q. State what the character and condition of that sleeping-car equipment was in 1869, and the beginning of 1870, as fully as you can recollect.

A. The cars were small cars, rather light; they had four-wheel trucks, most of them. The equipment was not at all uni-

1244 form; this equipment was put on the road during the period of eight or nine years previously, and, of course, the older cars were inferior in condition and in plan and in design to those that were put on later.

Q. How early did the Pennsylvania railroad begin to use this equipment?

A. They commenced in 1858, I think. They made a contract with Woodruff and others to furnish sleeping cars in 1858, under patents that were taken out by Mr. E. C. Knight, I believe.

Q. Was that the contract and equipment to which the Central Transportation Company afterwards succeeded?

A. Yes, sir.

Q. What was the character of that equipment in respect to its weight and strength and the internal arrangement of the cars?

A. The cars were rather lightly built. They were small cars. The arrangements of the berths were not as convenient and as good as we thought they ought to be.

Q. How were they arranged?

A. Some of them were three-decked cars; that — to say, three berths high; a lower berth, which was a reasonably wide one and which might be called a double berth, and then there were two single

berths, one above the other, above this lower berth. Some of them had only two rows of berths, a lower berth, which was a double berth, and one single berth above.

Q. Some of these cars then were the cars that were put into service in the time of the first contract with Woodruff and others?

1245 A. Yes, sir; and others were added from time to time.

Q. When were the remainder of the cars built?

A. From time to time during that period; I cannot say from memory how many each year, but as the equipment was increased, a number of additional cars were put on from time to time as they were needed, and those cars were, of course, probably improvements on the original cars. The cars represented all classes of cars from the original cars put on, the first sleeping cars put on, down to what they called their silver palace car, and there were various gradations of cars between them.

Q. They were the collection of all the styles of cars built from the time of the original contract down to 1876?

A. Yes, sir; they represented the original cars and improvements made on them from time to time after that.

Q. What were those silver palace cars of which you speak?

A. They built a number of those cars towards the latter part of their contract. I mean the year before the contract between the Pennsylvania Company and the Pullman Company was made. And they were intended to be an improvement on the old cars, and they were in some respects. They were a handsomer car, more attractive in appearance, but practically there was not much difference in their berth arrangement. They were a somewhat stronger and heavier car than the original cars. They were four-wheel trucks, if I remember right; they were not six-wheel trucks.

1246 Q. By the silver palace cars were meant those later constructed cars, that had silver painted posts?

A. Yes, sir. The roof and berths were supported by silver-plated posts, and there was a great deal of silver ornamentation about them. That is what gave them their name.

Q. Was the construction of those cars still substantially the same as that of the older cars?

A. They were constructed under the same patents, and I suppose after the same pattern. The berths and internal arrangements of the cars were the same. I think they added a wash-room and vestibule in those cars, which the others did not have, if I remember aright.

Q. How did those changes affect the comparative strength and durability of the cars?

A. Those changes did not affect the strength of the cars.

Q. In those respects they were not superior to the cars that had preceded them?

A. I could not say that. The cars were probably of stronger construction, because the necessity of having them stronger had shown itself beforehand, but the silver columns did not add to the

strength of the car. The cars were probably a better constructed car than the earlier ones.

Q. But I understand you they were constructed upon the same models?

A. The same arrangement of berths and interior arrangements.

Q. Why did the Pennsylvania lines wish to get rid of those cars?

1247 A. Because they were not considered equal to the cars furnished on other roads. They were not equal to the cars furnished and running on the Erie road, or they were not considered equal to the Pullman cars which were running on roads west of Chicago and one or two of the roads east of Chicago. It was found that they were generally not satisfactory to the public or to the railroad company. We felt it in our passenger business, showing the necessity for better cars.

Q. State whether, if any, what representations were made to you or the other officers of the Pennsylvania Railroad Company upon that subject by any of the men connected with the traveling department, the passenger agents, and so on, of the road, and whether or not such representations influenced the Pennsylvania railroad on that subject.

(Objected to as incompetent evidence.)

A. There was a complaint by the passenger agents and the men whose business it was to solicit and manage the passenger business, of those cars. I cannot specify the occasions, but it was a general feeling in the service that the cars were not satisfactory and not up to the requirements, and that we were losing business on that account.

Q. Do you know what the feeling was and whether representations of that character were made by the officers of the Pittsburg, Fort Wayne and Chicago Railway Company?

(Objected to for the same reason.)

A. I knew that Mr. McCullough, who was the vice-president in charge of the Fort Wayne road, was very decided in his com-
1248 plaints about the condition of the sleeping-car equipment. His views led largely to the making of the contract with the Pullman Company.

Q. What did he want?

(Same objection.)

A. He wanted Pullman cars.

Q. Was the Pittsburg, Fort Wayne and Chicago Railway Company operated and controlled by the Pennsylvania railroad before 1870?

A. It was operated and controlled independently before the lease to the Pennsylvania railroad.

Q. What was the date of that lease?

A. The Pittsburg, Fort Wayne and Chicago railway was leased to the Pennsylvania Railroad Company in June, 1869. Before that

it was operated independently. After that, under the lease, it was controlled by the Pennsylvania Railroad Company.

Q. You were general superintendent of the Pennsylvania Railroad Company during the year 1870?

A. Yes, sir.

Q. Which included at that time the Pittsburg, Fort Wayne and Chicago and other leased lines?

A. Yes, sir. But I had nothing to do with the management of the lines west of Pittsburg.

Q. Before you were general superintendent you were superintendent of motive power, were you not?

A. Yes, sir.

Q. You succeeded Dr. Williams, did you not, as superintendent?

A. Yes, sir.

1249 Q. Do you remember at what date you succeeded him as general superintendent?

A. I think it was in the early part of 1870.

Q. Please look at this pamphlet which I hand you, called the 24th Annual Report of the Board of Directors of the Pennsylvania Railroad Company to its stockholders, February 21, 1871, and state if the report of the general superintendent, signed "A. J. Cassatt, general superintendent," was the report that you made to the Pennsylvania Railroad Company.

A. Yes, sir; it was.

Q. I call your attention to the printed date of this report, where it is dated, "Office of the general superintendent, Altoona, Pa., February 1, 1870." This purports to be a report of the operations for the year 1870.

A. Yes, sir; that must be a misprint. It ought to have been February, 1871, because it is a report of the year 1870.

Q. In that report of the general superintendent occurs this passage, which I will read to you. "On January 27th a contract was made with the Pullman's Palace Car Company for the running of their cars on this road, that company having leased the entire equipment of the Central Transportation Company. The Pullman Palace Car Company immediately proceeded to build a large number of handsome cars, and although only a few could be got into service in time for the summer travel, the general condition of the sleeping cars was considerably improved, an improvement which was very much needed. A sufficient number of cars to put

1250 all the through and local lines in first-class condition will be ready for service before the opening of the spring business, and the sleeping-car accommodations of this road will then be second to none in the country. During June the St. Louis, Vandalia and Terre Haute Railroad Company, having been opened for business, a line of palace sleeping cars was put upon the line between New York and St. Louis; this company, therefore, now has daily through lines of palace sleeping cars running to and from Chicago, Cincinnati, St. Louis and Louisville."

Please examine that passage and see if that is part of the report which you made at that time.

(Objected to because the report itself is not evidence, nor can the testimony of the witness as to it be material or competent.)

A. Yes, sir.

Q. State whether or not the statements of that report correctly express your views upon the subject of which it speaks, at that time.

(Objected to for the same reason.)

A. Yes, sir; they do.

Q. And the facts therein stated are such as existed at that time?

(Objected to for the same reason.)

A. Yes, sir.

Q. State as near as you can remember, how soon the old Central Transportation equipment commenced to be superseded and put out of service on the Pennsylvania Railroad lines after the contract made with the Pullman Company, and how rapidly that process proceeded.

1251 A. The process commenced at once after the signing of the contract, and went forward as rapidly as practicable until all the Central Transportation cars had been put out of service and replaced by Pullman cars. I cannot say from memory exactly how long that took. Several years.

Q. Why did they commence immediately to put the Central Transportation cars out of the service?

A. Because the subject of making the contract was to have Pullman cars introduced upon the road and improve the service.

Q. You say that was the object of making the contract. What contract do you mean?

A. I mean the contract between the Pullman Company and the Pennsylvania Railroad Company.

Q. The Pullman Company succeeded the Central Transportation Company?

A. Yes, sir.

Q. The Pennsylvania Railroad Company settled with the Pullman Company, did it not, and paid for a considerable number of old Central Transportation Company cars that were so put out of service. If so, state what you know about that.

A. They can hardly be said to have paid for the cars.

Q. Please state what did occur on that subject.

A. What occurred was this. The contract which the Pennsylvania Railroad Company had with the Central Transportation Company made it obligatory upon the Pennsylvania Railroad Company to maintain and perpetuate these cars in every respect,

1252 excepting as to the bedding and upholstering. That is to say, the Pennsylvania Railroad Company had to repair those cars, and when they wore out one had to replace them with other cars at their expense. In other words, had to maintain those cars. When the contract with the Pullman Palace Car Company was made, the Pullman Company agreed to furnish and equip the Pennsylvania Railroad Company with first-class sleeping cars, but there was a clause in the contract by which the Pennsylvania Railroad

Company agreed to put the existing cars then on the road, which belonged to the Central Transportation Company, in perfect order and to accept them as part of the equipment to be furnished by the Pullman Company for service on the Pennsylvania railroad. That question arose immediately after the contract was signed. Mr. Pullman wanted a lot of those cars put in the scrap pile and new cars built by the Pennsylvania Railroad Company at their expense in place of them, and he wanted us to build cars of the pattern that he was then using.

Q. Were not those the kind of cars that the Pennsylvania Railroad Company itself wanted on the road?

A. Yes, sir; we wanted those cars too. We told him that the proper interpretation of the contract was that we should simply maintain the cars as they were, the Central Transportation cars, that it was no part of our business to furnish money for an improved car. There was a great deal of discussion about that, and finally that point was yielded, or rather compromised, by our agreeing to pay the Pullman Company $7,000 for each car as it
1253 was taken out of service. We were then to be relieved of our obligation to repair that car.

Q. To what extent then did you understand that the $7,000 represented the market value or the actual value of that car at the time?

(Objected to.)

A. That did not enter into the question so far as the Pennsylvania Railroad Company was concerned. We were under obligations to rebuild those cars and make them practically as good as new, and this represented, in part, what it was estimated it would cost to rebuild those cars.

Q. Did you want those cars when rebuilt back in service on your line?

A. No, sir; we did not, and therefore it was a compromise. Of course Mr. Pullman could have demanded that we should rebuild those cars, and that we should accept them and have them run on our road as part of the equipment furnished by him. We did not want them and he did not want them. This payment of $7,000 was really a compromise, first to relieve us of all obligations to rebuild those cars, and second to induce Mr. Pullman to put new cars on in their place of the pattern of the Pullman Palace Car Company.

Q. And get those cars off the line?

A. Yes, sir.

Q. Would not the cars that the Pullman Company was to put in their place be more costly than these?

A. Yes, sir; more costly than these original cars. They would have cost more than it would have cost to rebuild those cars of the original pattern.

1254 Q. State how far that was, then, a ground of objection made by Mr. Pullman in his settlement for those cars, the objection that taking those off the line involved his putting on much more expensive cars in their place.

(Objected to as incompetent and leading.)

A. I am not quite sure I understand the question.

Q. You speak of this as a compromise price put upon those cars in this adjustment. State what the elements of that compromise were, as you understand it.

A. Mr. Pullman took the position that under the contract between the Pennsylvania Railroad Company and his company, we ought to replace these condemned cars by Pullman cars at the expense of the Pennsylvania Railroad Company, and of course that was the kind of car we wanted to have on the road, and was the kind of cars he wanted to put on the road. We objected that that was not in accordance with the contract, and that all we were obliged to do under the contract was to build a car equal to the old repaired car, and the difference between the cost of the two was a very considerable amount of money, and finally this compromise was made by which we agreed to pay $7,000 each for all the condemned cars, to relieve us of our obligations to rebuild them, he agreeing, of course, to go on and replace these cars, then, at his own expense, using the $7,000 towards that, and to put on Pullman cars.

1255 Q. What did you understand it would really actually have cost you to build such a car as these old cars for which you allowed the $7,000; would it have cost more or less than that sum?

(Objected to as irrelevant and incompetent.)

A. I cannot say now, at this distance of time, what our estimate was as to the cost of rebuilding those cars, but I do remember very well we considered we were paying a compromise, that is to say, we were paying more money to Mr. Pullman to release us of this obligation than it would have cost us to rebuild the cars, the average cost, because our contract was to put them in first-class order, and it would not have meant a new car in all cases; to make some of them as good as they were originally in the same class, they could have been repaired without entirely rebuilding, and we felt at the time we were paying more than it would cost us to rebuild them, but we did it because Mr. Pullman had it in his power if he had chosen to enforce the contract, to go on and say, "simply rebuild them and you can run these cars on your road," and we did not want them; we paid something more as a compromise.

Q. The compromise then was to induce the Pullman Company to let these cars go out of service and to put the more expensive cars of the Pullman Company in their place?

(Objected to as leading.)

A. Yes, sir.

1256 Q. What had been the course of development prior to 1870, for a number of years, in the tracks of the Pennsylvania railroad and its equipment? Had the equipment and motive power gradually grown heavier, or otherwise? Had it been in process of development in that direction during that time?

A. Oh, yes. The motive power was gradually being increased

in power and weight. The heavy rails were being laid and heavier cars were built. That process has been going on ever since.

Q. And it had been going on in 1870 for some years, had it not?

A. Yes, sir.

Q. Had the weight and size of the rolling stock, coaches, etc., of the Pennsylvania railroad increased at that time?

A. Yes, sir. The new cars being built were heavier than the old cars. Heavier locomotives were taking the place of lighter ones as they were worn out.

Q. How did the cars that were being constructed and the general equipment of the Pennsylvania railroad in 1869 and 1870 compare in respect of that process of development with the sleeping-car equipment of the Central Transportation Company?

A. The cars which the Central Transportation Company built at the latter part of their contract were heavier cars and larger cars than the first they put on.

Q. You refer to those last few silver palace cars?

A. Yes, sir.

Q. How about the great mass of the equipment of the Central Transportation Company that was running on the road?

A. The Central Transportation Company's cars hardly kept pace with the improvements that were made in other directions in equipment, I think.

1257 Q. Was the original contruction of those old Central Transportation cars, under the patents under which they were built, such that they were susceptible of being remodeled and made over without entirely rebuilding and making a new car—of being remodeled into such a car as the Pullman cars of that day that took their places on the road?

(Objected to as irrelevant and leading.)

A. No, sir; they could not be remodeled into Pullman cars.

Q. State the reasons why.

A. They were not as large and not as long. They were lighter construction and they were a narrower car, somewhat.

Q. What were the trucks?

A. They had four-wheel trucks.

Q. What did the Pullman cars have?

A. They had six-wheel trucks. They were longer cars and heavier cars, and therefore capable of having more accommodations put into them.

Cross-examination by Mr. JOHNSON:

Q. Dr. Williams, your predecessor, as general superintendent of the Pennsylvania railroad, has testified, speaking of the period of 1869 and 1870, as follows: "There had been, just prior to that time, an outcry against heavy rolling stock, and the whole tendency of the roads had been to reduce." Is your recollection in accord with Dr. Williams, or contrary?

A. I should say contrary. I know that there was an out-
1258 cry, it was a theory of Mr. Edgar Thomson, who was then president of the road. He was constantly complaining about the increase in the weight of the equipment, the locomotives and the cars, but I do not think there was any period at any time when lighter cars were built or lighter locomotives than the cars which were in existence before that. The tendency has been for increased weight always.

Q. He further testified: "The Pennsylvania railroad built a lot of freight cars there under Mr. Thomson's direction, weighing 16,000 pounds, instead of 30,000 or 35,000 pounds, which had no great strength in them." How does that accord with your recollection?

A. There were no cars that weighed 30,000 or 35,000 pounds at that time on the road, or anything like it.

Q. He says they weighed 16,000 pounds.

A. Yes, sir.

Q. What do freight cars weigh now?

A. Freight cars run now from 22,000 pounds up, ordinary freight cars, 28,000 and 30,000 pounds.

Q. How did they range in 1869 and 1870?

A. They ranged from 18,000 pounds for flat cars, up to 21,000 or 22,000 pounds. I am speaking from memory now.

Q. Many of these sleeping cars of the Central Transportation Company had been built at your shops, had they not?

A. I believe a great number of them; yes, sir.

Q. And under the inspection of your car-inspector and to his satisfaction; did not the contract require that they should be approved by your car-inspector?

1259 A. Yes, sir; that is true in a sense; they were built on their plan. We built them under contract; they paid us for building them; after the car was finished we had to accept it; it was subject to our acceptance.

Q. The contract was made in 1858, was it not, with the Central Transportation Company?

A. The original contract; yes, sir. That was before my time, but I remember it was about that time.

Q. In 1858 and 1859 all the passenger cars were lighter than was being approved of as a better construction in 1870, were they not?

A. Yes, sir.

Q. What would you have said was the average weight of your own passenger cars in 1869, not such as you were then building, but the average weight of such as were then in use?

A. I cannot answer that question. I could tell you about what the new cars weighed. The new cars built at that time weighed about 38,000 pounds.

Q. And were a marked increase on the old passenger cars?

A. Yes, sir; they were heavier, and longer, and larger in every way.

Q. I take it for granted that, while what were considered railroad

needs exacted and continued to exact heavier cars, you did not immediately throw off all your cars, but changed gradually?

A. Changed gradually.

Q. And that is the experience of railroad men generally, is it not, that as new and better methods of construction become ap-
1260 proved and adopted, they gradually make the transformation of the old into the newer improvements or methods of transportation equipment?

A. Yes, sir; they do it with more or less rapidity according to the circumstances.

Q. What do you think would be the acceptability in first-class sleeping-car service today, 1894, of such cars as you heralded in 1870 as improved cars of the Pullman Company. Rather antiquated, and not acceptable, would they not?

A. In some respects; yes, sir; in the main features the Pullman car of today is not so different from the Pullman car put on then. There have been gradual improvements made, of course.

Q. Do you remember when the Pullman contract was renewed, about 1885, that one of the stipulations of your company was that as rapidly as possible the then Pullman service should be replaced by a service that was more in accord with the standard used on the western roads?

A. No, sir; I do not remember that; I was not an officer of the company in 1885, and I do not remember that clause in the contract.

Q. I see that, in the contract which was entered into between the Pullman Company and yourselves in 1870, there is a provision to this effect: "Said cars so furnished," that is by the Pullman Company, "to be in part the cars now on the lines of the Pennsylvania Railroad Company and heretofore the property of the Central Transportation Company, which cars are to be put in first-class condition by the respective parties hereto," etc. It would appear that
1261 your contract permitted, without any restriction or exclusion, the use of the Central Transportation Company's sleeping cars. Why did your company, in making a contract with the Pullman Company at that time, not stipulate that he should put on all Pullman palace cars?

A. That question I am not able to answer; I had nothing to do with making the contract, but that question did occur to me as soon as I read it.

Q. Was it not for this reason, that your railroad company could not and would not negotiate with Pullman for his service upon your lines, until there had been an agreement between him and the Central Transportation Company which relieved your company from any obligation to the Central Transportation?

A. I always understood that was the case.

Q. And, therefore, when Pullman came to make his contract, he had the right which had been conferred by the former contract between the Pennsylvania Railroad Company and the Central Transportation Company upon the latter company, had he not, and so was able to exact those terms?

A. That was undoubtedly the case.

Q. You recall that the old contract with the Central Transportation Company required the Pennsylvania Railroad Company to renew its cars from time to time?

A. Yes, sir.

Q And, therefore, when the contract was made with Pullman, after he had become the assignee of the Central Transportation Company, he was able to insist upon the same terms with the Pennsylvania Railroad Company, was he not?

1262 A. Yes, sir.

Q. You know that had Pullman come without any control, such as the possession of the Central Transportation contract gave him, to the Pennsylvania Railroad Company, the latter never would have made any such bargain with him as to renew his cars and keep them in order?

(Objected to because nobody can state what would or would not have been done in a matter that never occurred.)

A. You mean if we had been making a new contract with Pullman without reference to the Central Transportation Company?

Q. Yes; they never would have made such a bargain with him?

A. Yes, sir; not to accept old cars; but they would have made a bargain to make new cars and put on the road and operate them, because that was the contract he had with all the roads in the country at that time. That was the contract he had with us down to the contract of 1885.

Q. But in 1885 it was under another contract?

A. No, sir.

Q. When his contract with the Central Transportation Company expired, that is when his contract made, because of his possession of the Central Transportation's contract expired, your company refused to make any contract with him for renewal and repairs?

A. No, not exactly. They did make a contract with him for renewal and repairs under conditions. I do not exactly remember what they were, but there was a clause in the contract of

1263 1885 by which we were under certain conditions to pay for renewals and repairs. I cannot exactly state it.

Q. Do you think that during the fifteen years' operation under the contract of 1870 with Pullman, by which the wheelage allowance was made to him in part compensation for the contract to renew, that his profits were less than $600,000 a year?

(Objected to.)

A. I never made any computation of that kind. I never made any estimate of it all.

Q. In 1858, when the contract was entered into originally, as you have heard and as the papers show, with the predecessors, the Central Transportation Company, of course the sleeping-car business was in its infancy?

A. Yes, sir.

Q. And it kept on improving down to 1870, and after 1870, did it not?

A. Yes, sir.

Q. Pullman had pretty largely imbedded his service into the lines west of Pennsylvania Railroad service in 1869 and 1870, had he not?

A. Yes, sir; he had his cars on all the roads, I suppose the majority, running from Chicago west.

Q. And the whole of the western travel at that time bound to Washington, Philadelphia, New York, or New England had to find its way either over the Baltimore and Ohio, the Pennsylvania, the Erie, or the New York Central, had it not?

A. Yes, sir.

Q. And Pullman had no hold on any of those four eastern connections with the ultimate destination of the travel in 1869 or 1870?

1264 A. No, sir; he did not operate either of the four trunk lines named.

Q. It was, of course, a very vital and important thing he should secure his eastern outlet for his sleeping-car service, was it not?

A. He was undoubtedly very desirous of getting a line.

Q. He never has been able to get over the New York Central; that has always controlled its own service.

A. No, sir; it has not controlled its own service, but it has been operated by a separate company, the Wagner Company. It is an independent company.

Q. What was the sleeping-car service of the Erie in 1869?

A. I do not remember whether it was owned by a company or owned by the Erie Company. They had very fine cars I remember.

Q. They had just introduced them, I think, a service of their own?

A. Yes, sir; they had very handsome cars.

Q. So that his only chance really was to get over the Baltimore and Ohio or the Pennsylvania?

A. Yes, sir.

Q. Both of which were controlled by the Central Transportation?

A. I do not know whether the New York Central had a contract in existence which prevented him getting on there. At any rate he did not get on there.

Q. At any rate he was not on it?

A. No, sir; or has not been on it since.

1265 Q. I may take it that in your reports as general superintendent, anterior to the one that Mr. Isham has shown you, there will be found no complaints of the insufficient character of your sleeping-car service?

(Objected to, as Mr. Cassatt did not make those reports.)

A. No, sir. We did not advertise that. I only made the report as superintendent of motive power.

Q. Were you aware that some of the cars of the Central Transportation Company were paid for at more than $7,000?

A. Yes, sir. I know that we paid $9,000. I speak of the Pennsylvania railroad. I do not know anything about the Fort Wayne. We paid $9,000 for several cars, and those cars were destroyed entirely. They were cars burned and destroyed in wrecks, and there was no salvage in them, or no value in them.

By Mr. ISHAM:

Q. That included the equipment, too, that was destroyed, did it not?

A. I am not certain about that. It is very likely it did. We paid $9,000 in lieu of rebuilding and replacing that car. Under our contract we would have had to replace the equipment also, in case of destruction or accident, so I take it for granted it did include the equipment.

By Mr. JOHNSON:

Q. But only inferentially, and not from recollection?

A. That is all; yes, sir.

1266 Redirect examination.

By Mr. ISHAM:

Q. Mr. Johnson inquired of you relatively to the importance to the Pullman Company of getting upon the through lines to the coast from Chicago and to operate such a line as well as the lines west of Chicago. State what you say with reference to how far it was considered important to the Pennsylvania railroad to get upon the Pennsylvania railroad the relations of the Pullman Company to the western traffic west of Chicago?

A. That had a very considerable influence in the making of the contract at that time.

Q. So that the contract with the Pullman Company was regarded as being reciprocally important, not only for the Pullman Company to come to the coast, but for the sake of the Pullman relations to the travel west which might be sent over the Pennsylvania lines?

A. Yes, sir; the Pullman Company had its cars on the majority of roads; in fact, I think all but one leading west from Chicago, and they could influence the direction of that travel east of Chicago very materially, and that had much to do with making the contract with them and still more to do with the renewal of the contract in 1885.

Q. You were asked about the weight and growth of the passenger equipment of the Pennsylvania railroad, its ordinary coaches, etc., their being changed by the Pennsylvania railroad from time to time as the process of development went on. Let me call your attention to the Central Transportation Company cars that were built

1267 from time to time. Were they or not built under the same patents and upon the same models and general lines of construction, under the Woodruff and other patents?

A. We always understood they were built under the patents owned by that company. There were various patents. One was taken out by Mr. E. C. Knight.

Q. They were all built under those patents, so that they remained continuously of the same general model?

(Objected to as leading.)

A. No; they did make some improvements. The most important improvement was the substitution of the double deck, taking away the third tier of berths.

Q. That would — in the line of what I was asking about; the general model and construction of the car itself was upon the same lines throughout, was it not?

A. Very much, sir.

Q. And that was true even on the later and more expensive cars that were built down to 1869, the silver palace cars, and the inside decoration?

A. Yes, sir; so far as I remember, so far as the arrangement of the berths was concerned, they were the same, they were under the same patents and all. They never used the single wide upper berth, which was one of the principal improvements that the Pullman Company had?

Q. That did not affect the general model of the car, its size, or its weight, or strength, or anything of that kind?

1268 A. No, sir; the Central Transportation Company never did use a wide upper berth in a single piece, which was the Pullman patent. I remember that, because when we built a private officers' car we had to get Pullman's permission to use that patent.

Q. They simply used the other berth?

A. Yes, sir; the berth was a small, narrow berth, and folded down.

Q. Mr. Johnson inquired of you with regard to the Pullman Company succeeding to the rights in regard to repairs and maintenance of the cars of the Central Transportation Company. Do I understand you that that was what you detailed as the basis of the compromise that you stated you made with the Pullman Company, the rights that they succeeded to under the contract with the Central Transportation Company in part?

A. We were obliged under our contract with Pullman to do what we would have had to do if the contract with the Central Transportation Company had continued, viz: to repair those cars and keep them in good order, except this: it was a specified stipulation in our contract with the Pullman Company that we should put them at once in first-class condition, if I remember. I have not seen the contract for twenty years. But we accepted those cars as part of the equipment to be furnished by him. That put us in the position of either having to go to work at once and rebuild those cars, or thoroughly repair those that were capable of being repaired and then accept them to run on the road, or to do what we did do, to pay Pullman a certain sum to take the cars and put new cars on in their place.

1269 Q. The obligation as to maintenance of those cars, which was put into the Pennsylvania Company contract with the Pullman Company, was also in the original contract with the Central Transportation Company?

A. Yes, sir.

Q. So that there was nothing remarkable in the introduction of that clause in the Pullman contract, was there?

A. No, sir; it was the contract he made with all the roads in the country.

Q. It was the usual contract with the roads at that time?

A. Yes, sir; all sleeping car companies.

Q. What do you know of its being usual to provide in those sleeping-car contracts that when there is a marked development in the growth and the business increases very much, that that is provided to be offset by a deduction in the burden of maintenance imposed upon the railroads as a usual thing in these contracts?

(Objected to as leading, irrelevant and incompetent.)

Mr. ISHAM: I ask that with reference to the question put to you by Mr. Johnson as to the elimination of the maintenance, mileage, etc., from the Pullman-Penusylvania contract made in 1885. Would not, as a usual thing, a modification of that obligation for maintenance be the usual result of the large growth of business?

(Same objection.)

1270 A. I am not familiar with any of the contracts that the Pullman Company has made with any railroad, except that one of 1885 with the Pennsylvania railroad, and I happen to remember that particular part. I know that there was some provision in the contract by which on lines on which the cars carried a certain average number of passengers, or earned a certain average earning per month, of per year, the obligation on the part of the railroad company to maintain the cars was either done away with entirely or modified. I think that was the first contract of that kind made; whether they have made any since I do not know. Up to that time I think all railroads of the country where they had contracts with Pullman or other sleeping car companies maintained the cars.

Q. You have stated, have you not, that it was to get rid of the cars constructed on these methods that the Pennsylvania lines desired to substitute the Pullman cars?

A. Yes, sir; that is the effect of what I have said.

Q. The Pullman Company was then, in 1869 and 1870, running on other lines sleeping cars constructed upon models which the Pennsylvania lines preferred and considered superior to those of the Central Transportation Company. Is not that so?

A. Yes, sir. That was the main object in making the change.

Redirect examination by Mr. PRICHARD:

Q. You do not mean, do you, in your answers to Mr. Isham's questions to say that from 1858 to 1869 or 1870 there had

1271 been no improvements in the Central Transportation cars in the matter of size, or weight, or strength?

A. No, sir; I do not think I said so. I do not mean to say so.

Q. That company, like every other sleeping car company, had been gradually improving its cars, had it not?

A. Yes, sir.

Q. Did you know that at the time of the lease of the Central Transportation Company by the Pullman Company there was existing a controversy between the two companies with reference to the infringement by Pullman of certain patents owned by the Central Transportation Company?

A. No, sir; I do not remember now. We had nothing to do with that.

Adjourned till 3 p. m.

CENTRAL TRANSPORTATION COMPANY
vs.
PULLMAN'S PALACE CAR COMPANY.

PHILADELPHIA, *April* 26, 1894—3 p. m.

Mr. Isham offers in evidence original charter or certificate of incorporation of the Central Transportation Company, under the general law of Pennsylvania; which was in evidence in the original case, but seems not to have the certificate of acknowledgment of the various signers, with the dates of the acknowledgments, etc.

Marked "Pullman Exhibit Original Charter of Central Transportation Company."

Also copies certified by the auditor general of the State of
1272 Pennsylvania, from the auditor general's office, of the capital stock reports of the Central Transportation Company, for the years 1864, 1865, 1866, 1867, 1868, 1869 and 1870; all covered by one certificate of the auditor general.

Marked "Pullman Exhibit Central Transportation Company's Capital Stock Reports."

W. J. HOWARD, a witness called on behalf of the defendant, being duly sworn, testified as follows:

By Mr. ISHAM:

Q. What is your name and residence?

A. W. J. Howard; residence, Philadelphia.

Q. You have already testified in the original cause in this case?

A. Yes, sir.

Q. What was your occupation in the years 1869 and 1870?

A. I was the general solicitor of the Pennsylvania Railroad Company, having charge of its legal business, with my office at the main building.

Q. How long had you been in that relation to the Pennsylvania Railroad Company?

A. In that, and my previous position as assistant secretary, I suppose may be fourteen or fifteen years.

Q. How long had you been general solicitor in 1870?

A. I can hardly give you that exact, but I suppose somewhere about ten or twelve years.

Q. You knew Mr. J. Edgar Thompson?

A. Very well.

1273 Q. And Mr. Thomas Scott?

A. Very well.

Q. Did you know Mr. McCullough, of the Fort Wayne road?

A. Very well.

Q. You knew, did you not, of the relations of the Pennsylvania Company with the Central Transportation Company operating the sleeping-car service on that line?

A. I suppose I may say wholly informally, as I had no connection with the operating of the road. I had, informally.

Q. You knew, did you not, of the change that was made when the conduct of that service was transferred from the Central Transportation Company to the Pullman Company?

A. Yes, sir.

Q. Did you know of the lease and the transactions connected with it, from the Central Transportation Company to the Pullman Company, about that date?

A. I prepared it, in connection with Mr. Dexter, counsel for the Pullman Company.

Q. You did prepare it?

A. Yes, sir.

Q. Were you at that time interested in or an officer of the Central Transportation Company?

A. In nowise whatever, in either that or the Pullman Company. My services were exclusively those belonging to my position as general solicitor of the Pennsylvania Railroad Company at that time.

Q. State what you know of the circumstances and reasons which led up to that change, and brought about that change in the

1274 sleeping-car service, from the Central Transportation Company to the Pullman Company. State it as fully as you can?

(Objected to by Mr. Prichard as immaterial.)

A. All the officers of the Pennsylvania Railroad Company had been for years dining together in the building, taking their meals together, and during these periods matters connected with the business of the company was always the subject of discussion and talk among us, either of criticism or condemnation. At this distance of time, about 30 years, over 25 years, it would be impossible for me to recall in detail the specific character of these criticisms. But there was at that time, and had been, a pretty general complaint about the management of the sleeping-car business. How or by what means Mr. Pullman's name was suggested I do not know, unless in our discussions there the question of Mr. Pullman's service of sleeping cars upon lines that he had the use of were contrasted with those on our own lines. Pullman's service had been highly commended, and the complaints existing with regard to the management of the Central Transportation Company I assumed that

they were brought together. But, as I said, without being able to specify at this distance of time the particulars of what was stated to be the dissatisfaction of the Pennsylvania Railroad Company with the service of the Central Transportation Company, I can only say that in general terms it was their inefficient management, and the plan of their cars was criticised by those officials whose busi-
1275 ness it was to operate the road and know more particularly in regard to what they were talking about.

Q. What was the general character of the Central Transportation Company's equipment of their cars, at that time? Their general condition?

A. I had occasion to travel very frequently on them to Pittsburgh, and I suppose, contrasted with my knowledge of the Pullman service afterwards, the service was very different, very much inferior to Mr. Pullman's service. I cannot of course recall any personal inconvenience, or any matter of that kind, but I am speaking now of the effect of the contrast between the two.

Q. What do you know of the object and purpose of the management of the Pennsylvania road in procuring a change of that service?

(Objected to by Mr. Prichard as immaterial.)

A. It was the general dissatisfaction, both of the public and of the officers. The Pennsylvania Railroad Company was struggling for a reputation for the best class of service in the country, and every effort of its officers had a tendency to secure it. So that the change from the Central Transportation Company to Mr. Pullman was the result, as I said, of a general dissatisfaction of the management and operation of their cars. They had a contract at that time. I may say that if the Central Transportation Company had given the service to the Pennsylvania Railroad Company that was entirely satisfactory there would have been no reason why this change would have been made.

Q. Was there at any time among the officers of the man-
1276 agement of the Pennsylvania line discussion of the effect upon the passenger traffic, and the competition of the Pennsylvania with other lines for passenger business, of this sleeping-car equipment, and if so, what discussion was there on that subject?

(Objected to by Mr. Prichard as incompetent.)

A. Without being able to specify the exact language of the officers of the company whose business it was to keep a general survey of the whole railroad interests of the north and west, they, no doubt, from seeing Mr. Pullman's cars knew of the service that he was rendering upon the lines he had——

Q. I am calling your attention to the effect upon competition, the effect on the passenger traffic in competition with other roads?

(Objected to by Mr. Prichard.)

A. Every nerve of the Pennsylvania Company has been stretched to the utmost to give satisfaction to the public, and make and pre-

serve its reputation as being the main trunk line of the country, and I never knew it to spare any efforts——

Q. I do not think you get my question. The question was whether there was discussion of the effect of this sleeping-car equipment in competition for business with other roads?

(Objected to by Mr. Prichard.)

A. Unquestionably so; yes, sir.

Q. If so, what was said upon that subject?

A. Of course, I cannot recollect the exact words, but it was that the sleeping-car service was a comparatively new matter,
1277 and the traveling public would, of course, travel upon the line that could afford them the best accommodations; and it did seem that the accommodations furnished by the Central Transportation Company were not satisfactory. Now, the effects of that necessarily would have been, of course, to have driven the traffic to other lines.

Cross-examination by Mr. PRICHARD:

Q. I understand you to say that the officers of the road who had more immediate connection with the transportation and construction departments would have more specific knowledge on this point than you would, your information being derived from conversations with those officers at various times. Am I right in that?

A. Mainly, and then with my own personal knowledge from having used the cars repeatedly between here and Pittsburgh.

Q A number of these officers have been examined, and so far as I recall, none of them have said the management of the Central Transportation was inefficient, although they have spoken of the dissatisfaction with the cars. Are you positive there was complaint of the management of the Central Transportation Company?

A. Yes.

Q. Will not you give the details of that, if you can?

A. It was mainly in the character of the sleeping arrangement, of the condition of the beds and of the covering, of their washing arrangements, and things of that kind, connected with the comfort of the passengers on the train.

1278 Q. Had there been any official communications between the two companies with regard to this?

A. Not that I know of.

Q. Any litigation pending or threatened in regard to it?

A. Not that I know of.

Q. Was there any complaint by the Pennsylvania Railroad Company that the Central Transportation Company was not keeping its contracts with them?

A. Yes, sir; in the manner I have indicated.

Q. Had that ever taken the form of formal notice or remonstrance?

A. From my experience the complaints generally came from the individuals who used the cars, the traveling public, that were brought to the attention of the officials.

Q. Had there been any complaint by the Pennsylvania Railroad Company to the Central Transportation Company that it was not keeping any contract it had with the Pennsylvania Railroad Company?

A. Not that I know of; in my department I would not know if such were the case.

Q. If the traveling public were not satisfied with the Central Transportation Company's cars, why did the Pennsylvania Railroad Company continue to keep them for so many years on its road?

A. I do not think there was any competitor.

Q. Is it not true that there were existing contracts between the Pennsylvania railroad and various of its connecting lines,
1279 with the Central Transportation Company, formal written contracts?

A. Yes; not at that time with the Central Transportation Company, I think; my recollection is they were with the individuals or firms that owned the patents.

Q. They were at that time owned by the Central Transportation Company?

A. They were, subsequently.

Q. In 1869 and 1870 they were owned by the Central Transportation Company?

A. Yes.

Q. Was not one of the reasons that the Pennsylvania railroad desired the Pullman service on its lines, that as the Pullman Company had contracts with most of the roads west of Chicago sleeping cars of any other company run over the Pennsylvania lines could not be run through over these western lines, whereas if the Pullman Company operated cars on both the Pennsylvania and western lines through cars could be run beyond Chicago without change?

A. That may have been one of the reasons, but I am not prepared to say that it was, never having heard of it at the time. I think at that time the Pennsylvania Railroad Company had the lease of the Fort Wayne and Chicago, or Pan-Handle first, or both, from Pittsburgh; the Pittsburgh, Cincinnati and St. Louis, and Fort Wayne, and I think the Terre Haute and Indianapolis road, which gave them the two lines into Chicago under their own control. I think the Vandalia line was leased or controlled by
1280 them from Indianapolis into St. Louis, and I believe beyond those points the Pennsylvania Railroad Company—that is, beyond the Mississippi—never sought business. So that I cannot see that the Pennsylvania railroad would have secured any special advantages by the use of Pullman cars that it could not have controlled by reason of the cars of the Central Transportation Company.

Q. Would not that have secured considerable advantage to the Pullman Company, by having the right to run cars on the Pennsylvania system as well as on the western lines?

A. Unquestionably it would have been a very great advantage to the Pullman Company, adding of course, to the lines over which its cars would run.

Q. At that time it was necessary that Mr. Pullman should lease, or in other ways secure control of the Central Transportation Company's contract, before the Pennsylvania railroad could enter into any contract with him, was it not?

A. Of course, Pullman would necessarily have had to control, or have had an agreement upon the part of the Central Transportation Company, before he would have undertaken to make any lease with the Pennsylvania railroad.

Q. And the same applied to the Pennsylvania railroad. It could not make any arrangements with Pullman until it got rid of the contract with the Central Transportation Company?

A. I do not remember the exact terms, but I think there was a provision in it for the termination of the contracts.

1281 Q. Was not that provision for this continuance only in case they ceased to run sleeping cars over their lines?

(Objected to by Mr. Isham, because the contract itself will show what it is.)

A. That means exactly what it says, a right to discontinue either from want of patronage or from any other cause. But my recollection is that no notice was given by the Pennsylvania Railroad Company. It was an amicable arrangement between the Pullman Company and the Central Transportation Company before the lease to the Pennsylvania Railroad Company was made.

Q. Having your recollection refreshed by the contract itself, do you still think there was any provision in the contracts with the Pennsylvania railroad by which they could discontinue, upon notice, the Central Transportation Company's cars, and continue to run other sleeping cars over their lines?

A. "From any other cause," it says.

Q. Is not the clause to which you refer this clause, "but if the Pennsylvania Railroad Company shall at any time deem it to their interest, from want of sufficient patronage or any other cause, to discontinue the running of sleeping cars, they may, by giving three months' previous notice, require such discontinuance"? Is not that the clause in the contract to which you refer?

A. That is the clause.

Q. Did you not, in order to enable Mr. Pullman to lease the Central Transportation Company's cars and contracts, draft a special act of assembly authorizing the Central Transportation Company to do that?

1282 A. I did.

Q. And that is the act of 1869, is it not?

(Ex. G to Pullman bill, shown witness.)

A. I presume that is the date; 1870 the act is.

Q. But that is the act, is it not?

A. I think it is.

Q. Was not the object of that act to enable the Central Transportation Company to turn over its cars and contracts, in order that

the Pullman Company might be enabled to make contracts with the Pennsylvania railroad?

(Objected to by Mr. Isham, on the ground that that act upon that subject has been construed by the Supreme Court of the United States, and been held not to be an act authorizing any such purpose, but simply authorizing the ordinary conduct of sleeping-car business.)

A. It was.

Q. That was your purpose in drafting it; I will repeat my former question: Was not the object of that act to enable the Central Transportation Company to turn over its cars and contracts, in order that the Pullman Company might be enabled to make contracts with the Pennsylvania railroad?

A. The purpose of it was just as is specified in the act itself; my recollection is that the charter of the company had but a short time to run. I think twenty years was the limit originally; I think it extended that. There was no authority for the leasing of their property, leasing, hiring or transferring, and this was drawn for
1283 the purpose of enabling them to extend their charter and hire and lease their property.

Q. And then, having drafted and having that act passed, you then drew a contract between the Central Transportation Company and the Pullman Company?

A. The act is dated February 9, 1870, and the lease is dated the 17th of February, 1870.

Q. You drew that lease in conjunction with Pullman's counsel, did you not?

A. Yes, I did; the act I notice—the question is decided in the preamble of the lease.

By Mr. JOHNSON:

Q. At the time that the agreement was made, and lease from the Central Transportation Company to Pullman, stipulating for a rental of $264,000 representing twelve per cent. upon a capital stock of $2,200,000, was it not understood all around that the $2,200,000 upon which the rental was based, fairly represented the value of the Central Transportation Company's then property?

(Objected to by Mr. Isham as not cross-examination. It is direct examination, and the question is leading and immaterial.)

A. I am unable to answer that question because I had no connection whatever with the Central Transportation Company, either as a stockholder, officer, or in any other way, and whatever the understanding may have been, I had no knowledge of and was not advised of.

1284 Redirect examination by Mr. ISHAM:

Q. What property did the Central Transportation Company have represented by the sum mentioned in Mr. Johnson's question? Do you know anything on that subject?

A. Nothing more than what transpired at the time of the negotiation of the lease. In turning over their property I think it was specified in the lease, cars and patent rights.

Q. These cars and patent rights—do you know anything of the value of these cars?

A. I have no practical knowledge at all. I am ignorant of the construction of cars. Of course I could not say definitely what their cost was, or what their value at that time was.

Q. Did you have anything to do with fixing the terms of that contract, the price that should be paid, and so forth? In negotiating the lease with the Pullman Company you say you were there simply as the officer of the Pennsylvania road and prepared the lease with Mr. Dexter, and you say you do not know anything of the value of the company's property, etc. Did you have anything to do with the fixing of the price that the Pullman Company was to pay?

A. No, none whatever. Those terms were agreed upon by other parties, and I simply put them—Mr. Dexter and myself—into legal form. We discussed that matter *pro.* and *con.* as to the form of the contract, but not with reference to its value.

1285 CENTRAL TRANSPORTATION COMPANY
vs.
PULLMAN'S PALACE CAR COMPANY.

TUESDAY, *May* 8, 1894—2.30 p. m.

Present: Messrs. Prichard and Runnells of counsel.

JOHN W. CLARK, having been duly sworn on behalf of defendant in cross-bill, was examined as follows:

By Mr. RUNNELLS:

Q. What is your business?

A. I am a carpenter by trade.

Q. In what employment?

A. The Baltimore & Ohio Railroad Company, passenger-car department.

Q. How long have you been employed in that department?

A. I went with them in June, 1853.

Q. Have you been employed by them constantly since that time?

A. I was away at one time, about fifteen or eighteen months only.

Q. What is your particular work?

A. Now it is interior passenger-work on coaches.

Q. What was the character of your work in the *the* years immediately preceding and including 1870?

A. I was working then on outside and inside work on passenger cars. Since that time I have been engaged on interior work altogether.

1286 Q. State whether or not your employment at that time was upon cars being constructed or upon repairs.

A. At first it was upon repairs.

Q. Did you, in the course of your work, obtain any knowledge of the sleeping cars of the Central Transportation Company?

A. I did.

Q. Were those cars at that time operated upon the Baltimore & Ohio railroad?

A. Yes, sir.

Q. In what way did you come to have knowledge of them?

A. By repairing them—working on them.

Q. In a general way, describe those cars with reference to their manner of construction, their size, weight, etc.

A. As far as my memory serves me now, I know in fact that they were about ordinary sized cars—four-wheeled truck, a very light car. I don't suppose they would weigh over forty-five or fifty thousand pounds—a very light-built car.

Q. What would you say as to the design or plan of the car?

A. It was very ordinary.

Q. What comparison would you be able to institute between those cars and the sleeping cars which were in use upon other railroads at that time?

A. There would be hardly any comparison between them at all. They were very much inferior to the sleeping cars of the present day in every respect—in build, material and everything else.

1287 Q. My question was addressed to the point of comparison between those Central Transportation cars and other sleeping cars in use upon other railroads at that time.

A. I don't know anything about other sleeping cars, only what were on our road.

Q. How were those sleeping cars about which you have testified, constructed as to the upper berths?

A. The upper berth was simply a frame with a cane bottom. In the daytime it was raised and fastened up to the side of the car, and at night it was lowered. There was a post between each section that held them in place.

Q. Were you familiar with the cost, construction and value of the cars at the time about which you have testified—that is, in 1870?

A. Yes, sir, I think I was about as familiar as any one would be who had worked on the cars in shops at that time.

Q. Do you remember how many sleeping cars were in use on the Baltimore & Ohio railroad at that time?

A. I don't think there were more than four to six, though I can't give you the exact number.

Q. What, in your judgment, was the value of those cars at that time—that is, in 1870?

A. I would not estimate their value at over $2,500 to $3,000 apiece. I don't think I would have been willing to give over $2,500 for them.

1288 Cross-examined.

By Mr. PRICHARD:

Q. Who was the master of machinery of the Baltimore and Ohio Railroad Company at that time?

A. J. C. Davis.

Q. By the contract between the Baltimore and Ohio Railroad Company and E. C. Knight and others, which had been assigned to the Central Transportation Company, the cars were to be subject to the approval of the master of machinery of the said railroad company, were they not?

A. I can't answer that question; I don't know anything about it.

Q. And therefore you do not know whether or not these cars had been approved by the master of machinery of the railroad company?

A. No, sir, I do not.

Q. Were any of these cars built by the Baltimore and Ohio Railroad Company?

A. No, sir.

Q. Are you aware of the fact that by the contract between the Baltimore and Ohio Railroad Company and the assignors of the Central Transportation Company the Baltimore and Ohio Railroad Company was bound to keep the cars in proper running order and condition, including renewal of wheels and axles?

A. No, sir. I didn't know anything about the contract between the two companies. I was only a journeyman in the shop at the time, and of course I couldn't get hold of any of those facts.

1289 Q. Then, in 1869 and 1870 were you only a journeyman in the shop?

A. Up to that time, yes, sir. The latter part of 1869 and early part of 1870 I was promoted to assistant foreman.

Q. What experience have you had in building sleeping cars?

A. I built some sixteen for the Pullman Company in our shops.

Q. When?

A. In 1870 and 1871 and 1873; along there; those years.

Q. That was after the Pullman Company acquired the lease of the Central Transportation Company?

A. Yes, sir.

Q. Prior to that time, had you had any experience of any sleeping cars except those of the Central Transportation Company?

A. No, sir.

Q. When you say there were not more than from four to six cars on the road, do you include the cars that were run between the cities of New York, Philadelphia, Baltimore and Washington, under an agreement between the Central Transportation Company, the Baltimore and Ohio Railroad Company and the Philadelphia, Wilmington and Baltimore Railroad Company?

A. Yes, sir.

Q. Can you give us any idea how many cars were run on that line alone?

A. I cannot; because I had nothing to do with them unless they came in the shop.

1290 Q. So that you think all the cars that were run both on the New York and Washington line and on the general line of the Baltimore and Ohio, amounted to only about from four to six?

A. I don't think there were over from four to six cars.

Q. Were all these cars of the same quality and value?

A. I think near about as I can judge; all about the same kind of car.

Q. And about the same age?

A. They looked to me about the same.

Q. And about how old would you judge those cars to have been in 1869 or 1870?

A. I should judge those cars would be from twelve to fifteen years of age, as well as I can judge. Of course I don't know when they were built.

Re-examined by Mr. RUNNELLS:

Q. When you say in your judgment they were from twelve to fifteen years of age do you base that statement on actual knowledge of the time of construction of the cars, or on their appearance?

A. On their appearance. That is all I have to judge by.

Q. When were those cars that you referred to as having been built by you for the Pullman Company as a matter of fact constructed?

A. The first six we built in 1870 and 1871. The first of them went out July, 1871, and the others went out the latter part of that year, and then we did not build any more for about a year, I think. Then we built four more for them.

1291 Q. I will ask you, by way of suggesting further recollection of the fact as to the number of cars, whether the sleeping-car line which you say these six cars filled required in 1870 and 1871 sixteen Pullman cars to fill them. In other words, is it not true that more than six Central Transportation cars were as a matter of fact in use on the Baltimore & Ohio railroad at that time?

A. I can't say positively; that is just as well as I can remember; because they did not run many trains with sleeping cars. There were a few trains, but, of course, when the Pullman Company put on their cars they put on more trains.

Q. Do you mean to include also the cars that were operated on the Philadelphia, Wilmington and Baltimore road, or do you mean six cars were employed exclusively on the Baltimore and Ohio road?

A. They were used, some of them, on the through line to Philadelphia, too. There were not many of them run on the main stem, I do not think, as far as my memory serves me; there were not many of them on the main stem west.

GEORGE W. HUMPHREYS, having been duly sworn, was examined as follows:

By Mr. RUNNELLS:

Q. State your full name and present employment.

A. My name is George W. Humphreys, and my present occupation is general foreman of the machinery department of the Baltimore & Ohio road, Washington, D. C.

1292 Q. How long have you been employed in the service of the Baltimore & Ohio Railroad Company?

A. Since the 8th day of November, 1861.

Q. In what capacities have you served?

A. I went with them in charge of the accounts in 1861, and about 1866 or 1867 in the absence of the foreman I attended to his duties; from that until 1874.

Q. When you say you were in charge of accounts you mean what accounts?

A. Clerical; the accounts of all the through-line cars, Central Transportation line, and what we term the New York and Washington air line; and the Central Transportation was a part and parcel of that air-line equipment.

Q. Did you have any knowledge of the fact of the sleeping cars of the Central Transportation Company being operated on your road?

A. Yes, sir.

Q. How did you obtain that knowledge?

A. From the fact that my duties would call me to charge up material against those cars daily; and in fact I was in those cars daily both inside and outside.

Q. For what purpose?

A. To see that the work was properly done, and to know that it was properly charged up. In fact, to charge it up. To see that the material was used.

Q. In giving that answer do you mean you had daily observation of the cars when they came to your shops for repairs?

1293 A. Yes, sir; we had no shops, but they were on side tracks, understand; what we call running ordinary repairs, were all the repairs that were done to these cars at the Washington end.

Q. How often did your duties require you to inspect those cars?

A. Sometimes one or two or three, sometimes half a dozen times a day, we were in those cars.

Q. Describe as well as you are able the character of those cars in 1870, and immediately preceding.

A. Just about as near as I can come to it is just what Mr. Clark said. They were a very plain car inside, and the upper berths were made of this cane seat; it was lowered down and the bedding was then put in there, and during the day of course that was put up in its place. A very plain car.

Q. What would you say as to their strength?

A. I would say those cars were pretty well dilapidated.

Q. What as to their age at the time you are referring to?

A. From their appearance inside and from the way the work was going to pieces in the cars, no joints could be kept tight, and from the fact that the cars were working all inside, I would judge the life of those cars certainly had been about twelve or fifteen years.

Q. What do you mean when you say the cars were working?

A. All sleeping cars have bulkheads, doors, partitions, jambs, etc., so that it is impossible to keep them tight unless they have
1294 been all torn down and put up again. The consequence is that working on them every trip they could never keep the squeaking noise out.

Q. Do you mean the Central Transportation cars?

Q. I mean the Central Transportation cars, yes.

Q. Were you familiar with the value of cars in 1870?

A. Yes, sir; to a degree.

Q. When you say you were familiar to a degree, what do you mean? What was the extent of your means of forming an opinion?

A. Only from outward appearance and the general appearance of the cars.

Q. When you spoke of having charge of the accounts, did you mean to include a knowledge of the cost of materials of cars?

A. Yes, sir; that is, of the repairs—of materials that were applied to these cars.

Q. Had you a knowledge of the cost of construction of cars at that time?

A. Not from personal knowledge; only from what was told me by our what we might call foreman of car-builders at Mount Clair, and he told me what these cars cost; when I say "these cars" I mean coaches, or whatever class of car they were.

Q. Did you have any knowledge of the construction by your company of cars for the Pullman Company in 1870, or thereabouts?

A. No, sir.

Q. State what in your judgment was the value of these Central Transportation sleeping cars in 1870.

1295 (Objected to, because the witness has not testified to any experience which would lay ground for his examination as an expert on cost of construction.)

A. I don't think those cars would bring over $3,000.

Q. Did you have an opportunity to see how other sleeping cars than the Central Transportation sleeping cars on other railroads at that time were constructed?

A. No, sir; not at that time.

Q. Did you observe the design of the Pullman sleepers which were put on your road in 1870?

A. I can't say I did; I recollect the cars that were placed there—the cars that were built about 1870.

Q. Have you sufficient knowledge of the designs of the Pullman cars put on the road, their general plan and appearance, so that you

could compare them with the cars of the Central Transportation Company which were in use just before?

A. You have reference to the Pullman cars at a certain date?

Q. No, the Pullman cars at that time.

A. No, sir; I don't think my memory would serve me that far.

Cross-examined.

By Mr. PRICHARD:

Q. What was your official title from 1866 to 1874?

A. I was there, as I said, in charge of the accounts and assistant to the foreman.

1296 Q. Did you have any official title?

A. Yes, sir.

Q. What were you called on the road?

A. Clerk.

Q. After 1874, what became your duty then?

A. General foreman.

Q. That you have remained ever since?

A. Yes, sir.

Q. I understood you to say that from 1861 to 1866 your duties were entirely clerical?

A. Yes, sir.

Q. But from 1866 to 1874 you attended to some of the foreman's duties in his absence?

A. Yes, sir.

Q. Do you mean to be understood by that that you did that in occasional absences, or constantly?

A. Not constantly.

Q. But when the foreman would be away?

A. Yes, sir; or when his duties would call him elsewhere, then I would go up and see that the work was done, because the Baltimore and Ohio railroad was called on to do the work on those cars.

Q. Where were you stationed?

A. Right at Washington station.

Q. You had no repair shops there, had you?

A. We had repair shops, but no shops that we could place a car in. All the repairs were done out on the track; running repairs.

Q. Were not the most important repairs on the cars done elsewhere, in shops where you could run the cars into the shop?

A. The cars did not go into the shop only when they went in for a general overhauling.

1297 Q. How many men did you have there attending to repairs between 1867 and 1870?

A. I presume we had about twelve men; that included repairing and cleaning the cars.

Q. Did that cover only sleeping cars, or all your cars?

A. Oh, no, that included the whole line; New York and Washington air line, and the coaches running between Baltimore and Washington.

Q. Do you know how many sleeping cars were run on the Baltimore and Ohio and the Washington air line at that time?
A. If I am not very much mistaken, to the best of my knowledge there were from four to six.
Q. These cars appeared to you to be about one kind or quality?
A. Yes; Central Transportation.
Q. And about the same age?
A. Yes, sir.

(Adjourned.)

1298 CENTRAL TRANSPORTATION CO. *vs.* PULLMAN'S PALACE CAR COMPANY. } Oct. Sess., 1886. No. 44.

TUESDAY, *June* 26, 1894.

Present: Samuel Bell, Esq., examiner; Messrs. Prichard and Wintersteen, counsel.

Continuation of Testimony on Behalf of Defendants to Cross-bill.

Counsel for complainants in the cross-bill have no objection to allowing the counsel for the defendant to the cross-bill to take this testimony, but as it is taken after the counsel for the complainants in the cross-bill understood that the case had been closed and after application had been made by both parties to the court for argument, they wish it understood that their consent to the taking of this testimony shall in nowise interfere with their right to have the case disposed of on the argument list in October.

Mr. Wintersteen, on behalf of defendants, desires to state that as he is advised, the testimony of the defendant in the cross-bill was closed with the distinct reservation of the right to call one or two witnesses and put in certain documentary evidence not then accessible; that the present testimony is taken in exercise of that reservation.

Counsel for complainants reply that while such is not their understanding, they are quite willing to have the testimony taken as above.

1299 HENRY H. SESSIONS, having been duly sworn, was examined as follows:

By Mr. WINTERSTEEN:

Q. What is your business?
A. Chief mechanical engineer of the Pullman Company.
Q. Where are you located?
A. At Pullman, Illinois. My office is at Chicago.
Q. Your functions as chief engineer extend over what territory?
A. Wherever the Pullman works are located.
Q. What are your duties as such mechanical engineer?
A. To examine and pass upon all plans and devices, alterations and modifications of the Pullman cars.

Q. How long have you been in that position?

A. About one year.

Q. What was your connection with the Pullman Company, if you had any, prior to that time?

A. For about eight years prior to the time of my appointment to the present position I was manager of the Pullman works at Pullman, Illinois.

Q. What were your duties in that connection?

A. The general management of the shops, so far as pertains to the mechanical department.

Q. In the course of your duties have you been called upon to familiarize yourself with the method of construction of the Pullman cars, and in particular of the berths manufactured by the Pullman Company for use in Pullman cars?

1300 A. Yes, sir. That was one of my particular works for the last nine years.

Q. Has your business in connection with the Pullman Company during the last nine years, or has it not, made you familiar with the method of construction of the berths of the Pullman cars during a period prior to that time?

A. Yes, sir. My business has made it necessary for me to be familiar with that class of work.

Q. During what period of time will you say you know the way in which the Pullman cars have been constructed, and particularly the berths? I mean of your own knowledge?

A. Of my own knowledge, since 1870.

Q. State in what way or ways the upper berths in the Pullman cars, and the cars constructed by the Pullman Company and used by the Pullman Company have been made? Describe them.

A. Since the construction of the "Pioneer," which, to the best of my knowledge and belief, was the first Pullman car built, the upper berths were hinged to the side of the car and suspended from the roof at the front edge of the berth by a wire cord and a jointed bar. About eleven or twelve years ago that method of hanging the berth was changed to what we call the pivot hinge, which was a pivot on each end of the berth at the back side and hinged to the section partition instead of to the side of the car. The front edge of the berth is suspended by a short-linked chain which winds around a spring-actuated winding spool.

Q. How many forms of fastening of the upper berth of
1303 the car have there been during the manufacture of the upper berth by the Pullman Company?

A. To the best of my knowledge and belief, only two used by the Pullman Company.

Q. Why do you say "to the best of your knowledge and belief"?

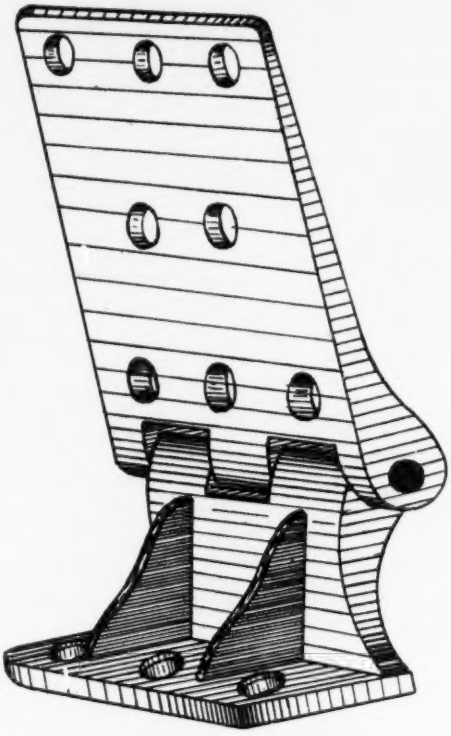
A. I know of my own knowledge that there have not been since 1871, and from our shop records and from our standard, with which all Pullman employés are familiar, I do not believe that any other than those two methods have ever been used in the Pullman car.

Q. I show you an object. What is that?

1301

HINGE FROM CAR PIONEER.

Cross-Defendant's Exhibit A, June, 26, 1894.



No. 922.

Pullman's Palace Car Co.
v.
Central Transportation Co.

} p. 1301.

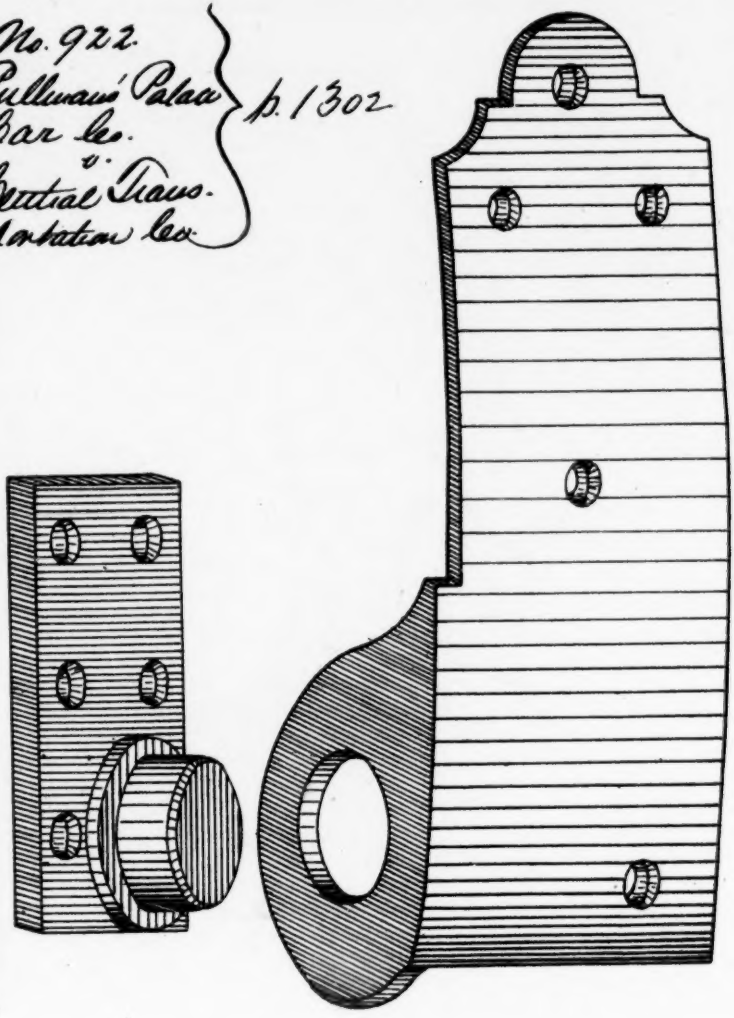
9914

1302

PIVOT HINGE.

Cross-Defendant's Exhibit B. June, 26, 1894.

No. 922.
Pullman's Palace
Car Co.
v.
Central Trans-
portation Co.
} p. 1302



A. That is what is known as a wall hinge for an upper berth of the first pattern used by the Pullman Company.

Q. Where did that come from?

A. This particular hinge I removed from the car "Pioneer" in Pullman storage yards at Pullman, Illinois.

Q. You removed that personally?

A. Yes, sir.

(Hinge marked Cross-defendant's Exhibit A, June 26, 1894). p. 981.

(Here follows diagram marked p. 1301.)

Q. I show you this. (Witness shown another object.) What is that?

A. This is known as a pivot hinge for Pullman upper berths.

(Pivot hinge marked Cross-defendant's Exhibit B, June 26, 1894). p. 982.

(Here follows diagram marked p. 1302.)

Q. What relation has that in point of use to the other exhibit which was submitted to you?

A. It is used for the same purpose.

1304 Q. Is that the form of hinge now in use by the Pullman Company?

A. Yes, sir. This is the modern hinge.

Q. Is any other hinge now used by the Pullman Company?

A. No, sir.

Q. Then I understand you to say the former style of hinge has been discarded and this pivot hinge is now being used?

A. It has been discarded, but all of the old-style hinges have not been removed from the cars which are now in service.

Q. The berths in the cars the Pullman Company manufacture and use were attached, as I understand it, and correct me if I am wrong, to the side of the car by two hinges some distance away from the ends of the berths?

A. About two inches from the end of the berth.

Q. In the style of the exhibit hinge taken from the "Pioneer"?

A. Yes, sir.

Q. And after a time that hinge was improved upon, and what is called the pivot hinge was used, and this pivot hinge I suppose is in the two ends of the berth at the back, is it not?

A. It is on the two ends of the face of the berth, the malleable-iron pivot being fastened to the section partition which divides the berths.

Q. The result of this combination of the hinge with the car produces what result with reference to the movability or immovability of the back of the berth?

1309 A. The back edge of the berth is held to the side of the car precisely in the same manner as with the old wall hinge.

Q. Is there any vertical motion to the back of the berth under

the connection and combination of the hinge or berth as manufactured by the Pullman Company?

A. No, sir. The back of the berth may be considered a fixture with the wall of the car.

Q. I show you these two papers and ask you what they are. (Papers shown witness.)

A. This one is a drawing showing a cross-section of the berth and the wall hinge attaching the berth to the side of the car as in the old car "Pioneer."

(Drawing offered in evidence and marked Cross-defendant's Exhibit C, June 26, 1894.) (pp. 986–'7.)

(Here follows diagram marked pp. 1305 & 1306.)

(Objected to by Mr. Prichard.)

The WITNESS: This drawing shows a cross-section of the berth with the pivot hinge as at present employed in the Pullman cars.

(Drawing offered in evidence and marked Cross-defendant's Exhibit D, June 26, 1894.) (pp. 990–'1.)

(Here follow diagrams marked pp. 1307 & 1308.)

(Objected to by Mr. Prichard.)

Q. I forgot to ask you, in order to establish these drawings, by whom were they made, or under whose supervision or direction.

A. They were made by my draughtsman under my supervision.

Q. Do you or do you not know that they faithfully represent the methods of construction of the upper berth under the old system of hinge used in the "Pioneer" and the pivot hinge?

1310 A. They do faithfully represent both.

Q. Do you know the method of construction of the upper berth under the old William A. Brown patent, No. 29137, letters patent having been issued July 17, 1860?

A. I have examined the patent, and I think I understand the construction.

Q. What knowledge have you of the construction of the upper berth under the Brown patent in respect to its attachment to the car and generally?

A. I have examined several cars, within the last two or three years, having what I call a portable upper berth. While I do not know that they were supposed to be constructed under the Brown patents, I imagine from the Brown drawing and specifications that they may have been constructed under those patents.

Q. What cars were they?

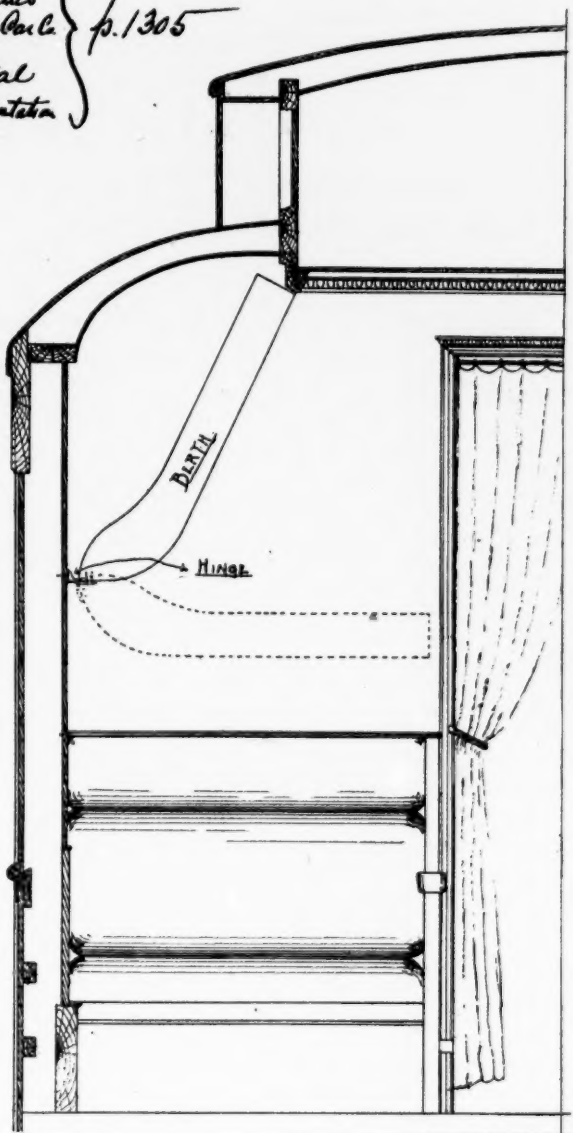
A. I cannot give the names of the cars. I do not recollect.

Q. Where were they?

A. They were in Pullman's storage yards at Pullman, Illinois, cars that were purchased by the Pullman Company and were not built by them.

1305

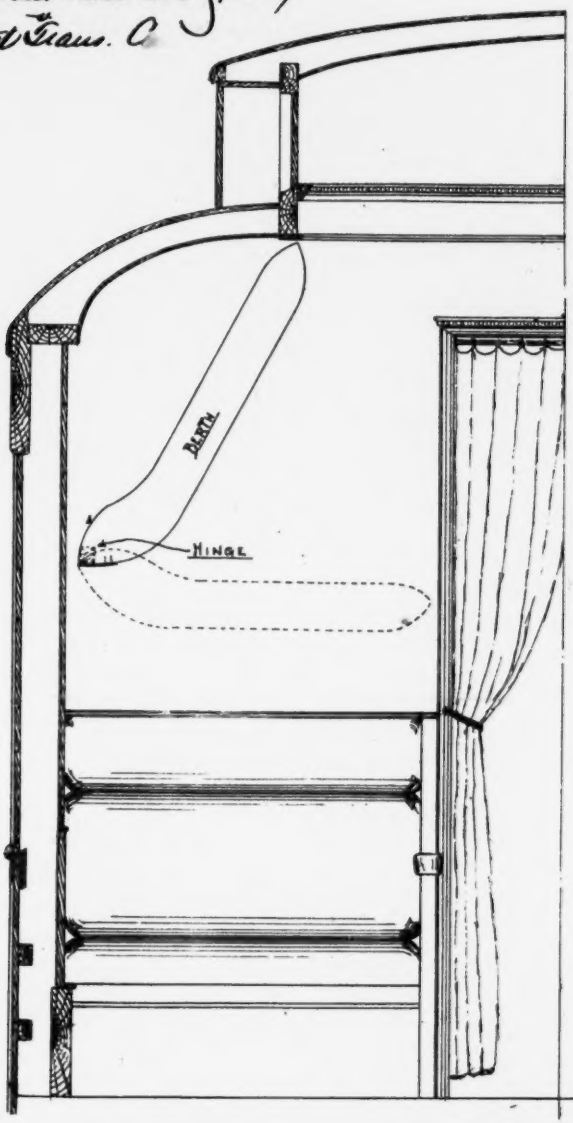
no. 922.
Pullmans
Palace Car Co.
vs.
Central
Transportation
Co.
} p. 1305



Cross-Defendant's Exhibit C., June 26, 1894.

1307.

No. 922.
Pullman's Palace Car Co. } #1307
Central Trans. Co.

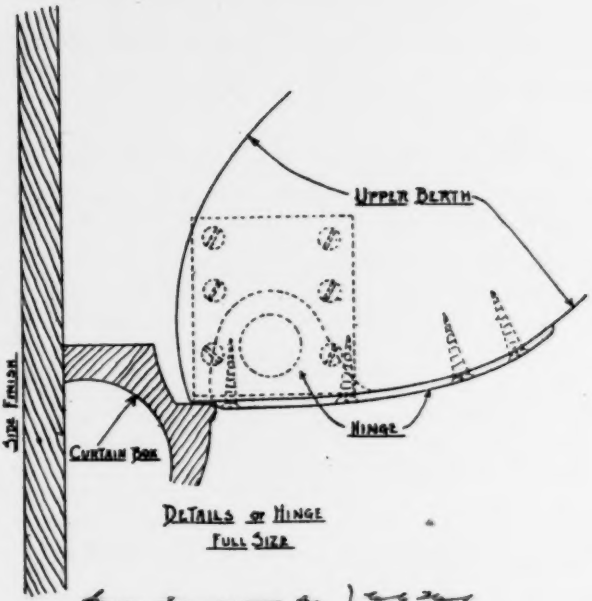


Cross-Defendant's Exhibit D., June 26, 1894.

1308

SECTION THROUGH PULLMAN UPPER BERTH
SHOWING
STANDARD PIVOTED BERTH HINGE

Cross-Defendant's Exhibit D., June 26, 1894.



DETAILS OF HINGE
FULL SIZE

No. 922.
Pullman's Palace Car C.
vs.
Central Trans. &c.
} p. 1308

Q. H
A. H
it was.
Q. W
cars?
ment o
(Obj

1311

for ma
roof.
rung fr
Q. W
Brown
(Obj

A. H
port an
elemen
Q. H
scribed
in resp
side of
A. C
Q. Y
what y
I desire
or has
feature
(Obj
has bee
it is im
Mr.

1312

Brown
Mr.
ing the
questio
but he
an infr

A. T
and I a
Q. W
A. B
ficatio
proval.
bles th

Q. Purchased from whom?
A. From some sleeping car company. I can't say what company was. In fact, I don't know.
Q. What was the method of constructing the upper berth in those rs? What was the method of attachment, if there was an attachnt of the upper berth to the car?

Objected to as irrelevant.)

11 A. The back edge of the upper berths were provided with hooks which fitted in corresponding staples at proper heights making up a berth and for storing it in the lower deck, in the f. The front edge of the berth was supported by stanchions runng from the floor to the lower plate.
Q. What do you understand to be the distinctive feature of the wn patent?

Objected to because the Brown patent will speak for itself.)

A. From reading over the Brown patent, I understand the supt and the bar on which the lower berth rests from an essential ment of it.
Q. Have you had your attention directed to the methods deibed in the letters patent of the raising and lowering of the berth respect to the connection between the back of the berth and the e of the car?
A. Only as I have seen it in the Brown patent.
Q. You having seen this in the Brown patent, and having stated at you understood to be the essential features of the Brown patent, esire to ask you whether the Pullman Palace Car Company has has not ever manufactured any cars in which those essential tures, or any of those features were used?

Objected to by Mr. Prichard, because in the first place, no ground s been laid for witness' opinion, and in the second place, because s immaterial.)
Mr. Wintersteen desires to state his question is not directed to eliciting the opinion of the witness, but his knowledge of the
12 fact whether or not the Pullman Company has used the invention in the letters patent No. 29137, issued to William A. own July 17, 1860.
Mr. Prichard states he has no objection to Mr. Wintersteen askg the witness what the Pullman Company did make leaving as a estion of law to be determined whether that was an infringement, t he does object to his asking the witness whether or not it was infringement.

A. To my certain knowledge, it has not in the last nine years, d I am morally certain it never has.
Q. Why do you say you are morally certain?
A. Because the Pullman cars are all built to standards, any modiation of which would pass through my office for opinion and apoval. Our standards do not include anything that at all resems the Brown patent.

Q. Has or has not the Pullman Company used an upper be which was lowered at the back by removing the berth from a soc and placing it into a socket further down into the side of the car

A. The Pullman Company has never used such a berth in th own cars or cars that they have built.

Q. Has the company ever in constructing its cars used a dev as described in the drawings attached to Brown's letters patent s ports G drawn from the side of the car and used in combinat with posts H laid down from those supports to the floor?

A. The Pullman Company has never employed either of th devices for supporting the berths.

1313 Q. As I understand it, those supports G are to support upper berths, and then the post H is a sort of a hook to support G?

A. Yes, sir.

Q. How do you keep up your upper berth if you do not slide from the side of the car a support in the nature of support G, as scribed in Brown's patent?

A. The front edge of the berth is suspended by a short lin chain which winds around a spring-actuated spool or pulley is not supported in any way from underneath.

Q. Does the method of constructing this hinge B in any resp tend to support the berth?

A. It does not tend to support the front edge of the berth.

Q. Have these hinges a limit of motion which prevents the be from going down indefinitely and sliding back against the sid the car below?

A. They have not a limited motion in that sense.

Q. Mr. Brown in his testimony in respect to his patent No. 29 stated that from his inspection of Pullman cars the Pullman C pany is using the same thing as embodied in his device in th cars today. What is your knowledge of whether that is true not?

(Objected to as asking the witness for a conclusion of law.)

A. I do not find anything in the Brown patent that is being u in the Pullman upper berth or in connection with the Pullm upper berth.

1316 Q. Mr. Brown refers in his testimony to the upper co hinging to the top or to the sides of the car. Did the ber in the cars manufactured under his patent, if you know, have hinged connection with the side of the car at all?

A. If they were constructed in accordance with his patent th did not have a hinge.

Q. Did you ever see any Central Transportation Company c that were transferred from the Central Transportation Company the Pullman Company?

A. I have seen them, but never made a careful examinatio them.

Q. Did you ever have your attention directed to the attachm of the upper berths in those Central Transportation cars?

1314

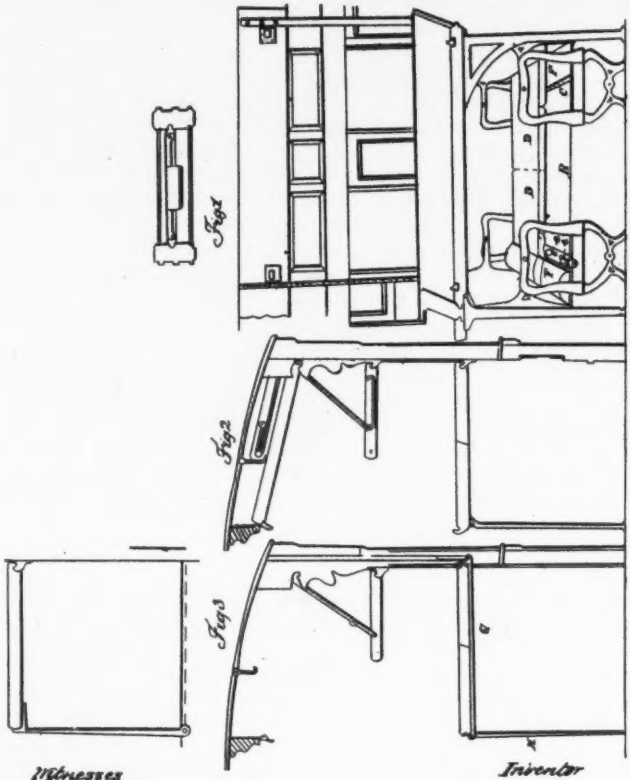
Cross-Defendant's Exhibit E, June 26, 1894.

2 Sheets—Sheet 1.

W. A. BROWN.

Car Seat and Couch.

No. 29,137. Patented July 17, 1860



No. 922.
Pullman's Palace Car Co
v.
Central Trans. Co
} F. 1314

1315

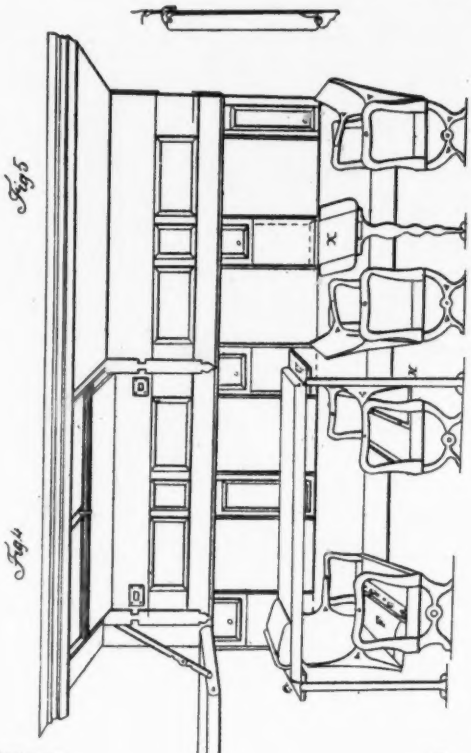
Cross-Defendant's Exhibit E, June 26, 1894.

2 Sheets—Sheet 2.

W. A. BROWN.

Car Seat and Couch.

No. 29,137. Patented July 17, 1860.



Witnesses
J. Wm. Child
F. B. Boyd, Jr.

Inventor
Wm. A. Brown

No. 922.
Pullman's Palace Car Co.
v.
Central Trans. Co.
} 4. 1315

A. Not specially.

Q. Then I suppose you wish your testimony to be directed to go in the direction of showing that the Pullman Company has not used what is described in the letters patent No. 29137?

A. Yes, sir.

(Mr. Wintersteen offered in evidence for the purpose of having the record complete and fully intelligible in connection with the text of the letters patent heretofore put in evidence and transcribed in the notes, to wit: letters patent No. 29137, issued to William A. Brown July 17, 1860, the two sheets or drawings, entitled sheet 1 and sheet 2, which are part of the said letters patent.)

(Drawings marked Cross-defendant's Exhibit E, June 26, 1894.) (pp. 1000–'1.)

(Here follow diagrams marked pp. 1314 & 1315.)

1317 Cross-examination by Mr. PRICHARD:

Q. How long have you been connected with the Pullman Company?

A. About nine years.

Q. That would carry you back to 1885?

A. Yes, sir.

Q. Prior to that time what was your business?

A. Five years prior to that I was superintendent of the car departments of the Gould South Western system of roads, embracing the St. Louis, Iron Mountain and Southern Texas and Pacific, New Orleans and Pacific and the International and Great Northern, Galveston, Houston and Henderson.

Q. Did your business prior to 1885 involve any special experience in the construction of sleeping cars?

A. Not in construction, but considerable in repairing. We repaired Pullman cars run over the lines.

Q. How long had you been in that position prior to 1885?

A. About five years.

Q. That would carry you back to 1880. Prior to that what was your position?

A. Since 1870 up to within one year of the time I went with the South Western system I was superintendent of the department of the Rome, Watertown and Ogdensburg railroad.

Q. From what time to what time?

A. From 1870 to 1879.

Q. From what time in 1870?

1318 A. The first of January.

Q. What experience did you have there in the construction of sleeping cars?

A. None in the construction of Pullman cars.

Q. What cars did you construct and repair?

A. Coaches and drawing-room cars, mostly for our local lines.

Q. But not sleeping cars?

A. Not sleeping cars at that time. Prior to that for seven years

I was engaged on the Vermont Central road from journeyman mechanic to general foreman of the passenger department.

Q. They did not run sleeping cars on the Vermont Central, did they?

A. Yes, sir.

Q. Did you have anything to do with the construction or repair of them?

A. The construction of those.

Q. What cars were those?

A. Pullman cars.

Q. What was your position with the Vermont Central?

A. I was foreman of the passenger department.

Q. What were your duties as foreman of the passenger department?

A. General supervision of the building of cars and repairing. The Pullman cars were built from drawings furnished by the Pullman Company and special material furnished by the Pullman Company.

Q. How long had they run Pullman cars on the Vermont Central prior to 1870?

1319 A. I don't think they were running Pullman cars at that time. They were building them to run on that line.

Q. How long were they building them prior to your leaving the Vermont Central?

A. The cars were started shortly before I left there.

Q. So that the only experience that you had with Pullman cars prior to 1879 was in the construction of the Pullman cars which were commenced by the Vermont Central a short time before you left?

A. Yes, sir.

Q. Did you have personally anything to do with the construction?

A. Only at the start, but my father being the superintendent of those shops, I took occasion to go there frequently to get some information about those cars.

Q. How old were you at that time?

A. I was born in 1847.

Q. Do you know anything whatever of your own knowledge about the litigation that was in progress between the owners of the Brown patent and Mr. Pullman or the Pullman Company prior to or about 1870 upon this Brown patent?

A. No, sir.

Q. And I take it for granted you do not know what in that litigation was the claim which was made as to the extent of this Brown patent?

A. I am not familiar with that.

Q. Nor the defences which Mr. Pullman put in?

A. No, sir.

1320 Q. When did you take this hinge from the "Pioneer"?

A. Within the last three weeks. I think it was three weeks ago yesterday.

Q. Have you any personal knowledge how often the "Pioneer" has been remodeled since it was built?

A. The body of the car has been remodeled twice, as our records show.

Redirect examination by Mr. WINTERSTEEN:

Q. Do you know whether or not the hinges in the original "Pioneer" car which supported the upper berths were ever removed?

(Objected to because of course the witness does not know.)

A. I know that our records show that we have never had but these two styles of hinges.

(Objected to by Mr. Prichard.)

(Adjourned.)

1321 CENTRAL TRANSPORTATION CO. }
vs.
PULLMAN'S PALACE CAR CO. }

SATURDAY, *July* 28, 1894.

Meeting held before the examiner, Samuel Bell, Esq., at eleven o'clock a. m., there being present: The examiner, Mr. Bell; F. P. Prichard, Esq., for plaintiff; A. H. Wintersteen, Esq., for defendant.

Continuation of Testimony for Defendant in the Cross-bill.

JAMES MARTIN, having been duly sworn, was examined as follows:

By Mr. WINTERSTEEN:

Q. What is your business?

A. I am superintendent of the Atlantic division of Pullman's Palace Car Company.

Q. What is your age?

A. I am forty-six.

Q. How long have you been connected with Pullman's Palace Car Company?

A. Since April 1, 1870.

Q. State in detail succinctly your various positions in connection with the Pullman Company and your duties in connection with each since you have been connected with it.

A. I entered the Pullman Company's service in April, 1870. I was clerk, cashier and assistant to the superintendent at Louisville,
Kentucky, and after that date was assistant to the superin-
1322 tendent until 1882, when I was made superintendent with an office at Louisville, and I have been superintendent in the company from that time up until the present.

Q. Where have you been located from time to time, if you have been located anywhere?

A. I was located in Louisville from April, 1870, to May, 1886. From 1886 I was located at Cincinnati in the same position up to October 31, 1888, and from that date to the present I have been located in Philadelphia.

Q. In your various official connections with the company what have been your duties, and what knowledge has the performance of those duties given you of the cars of the Pullman Company and the cars used by them?

A. The performance of the duties assigned me as assistant to the superintendent, and even when I was clerk, was to generally assist the superintendent in his various duties, and in doing this I came in contact with the equipment of the Pullman cars that were then in operation throughout the country.

Q. Do I understand you to say that your duties have familiarized you with or given you knowledge of the character of cars used not only as they would come into Louisville, but throughout the country generally.

A. Yes, sir.

Q. Did you have any traveling functions?

A. During this period I was moving about the country a great deal, particularly to Chicago, St. Louis, Cincinnati and throughout the entire South, and made occasional trips through the East.

1323 Q. Do you know from personal knowledge the character of the berths that have been used by the Pullman Company since 1870?

A. I am quite familiar with them.

Q. I show you a copy of letters patent No. 29137, dated July 17, 1860, issued to William A. Brown, patentee. Look at the same and say whether or not the Pullman Company during the time you have been connected with it has used on its road and in its cars the devices described in those letters patent as essential devices on which the patent was granted.

(Objected to, if the question involves the construction of a patent, because the witness is not qualified as an expert, and if it involves a question as to the kind of cars used the question should be so worded as to ask him the facts about the cars, not the construction of the patent.)

A. I have never seen any device used on a car built by the Pullman Company similar to the one shown by the drawing mentioned in your question.

Q. When you say you have never seen those devices used in the cars built by the Pullman Company do I understand you to say that you have never seen those devices at all? If you have, state when and where.

A. I have seen the device shown by this patent in some old cars that are stored near Duncansville in Blair county, Pennsylvania.

Q. What cars are they?

1324 A. Cars that originally belonged to the old Central Transportation Company and were sent there for storage on account of their being unfit for service.

Q. Do I understand you to say you have never seen those devices in any Pullman cars used by the company?

A. I have never seen this device used in any Pullman car.

Q. What did you see as the device which was used in those cars which you saw stored and which you say represented this patent?

A. I did not examine the cars carefully, and have never seen the berth operated by it. That is, I have never seen this device in practical operation, as it was in old cars that have been for many years out of service and were not Pullman cars.

Q. How were the upper berths in those cars which you saw moved up and down? What were the facilities for moving the upper berths into their lower and uppermost sockets in those cars that you saw. Describe as well as you can what you understand to be those devices that you saw?

A. My understanding of the manipulation of the upper berth is the same as is shown by these drawings.

Q. What is your understanding of those drawings?

A. That the main support for the bed making the upper berth was drawn from the side of the car, resting on a rod fastened to the floor, and on these supports the bed was laid.

Q. Those devices which you have described are noted in those drawings by the marks "G" and "H," are they not?

A. Yes, sir.

1325 Q. Have those devices ever been used in the Pullman Company's cars, or anything like them?

A. There has been no device similar to the support "G" or brace "H" used in any Pullman car that I have seen.

Q. In those cars which were stored, formerly belonging to the Central Transportation Company, how were the upper berths connected with the side of the car?

A. The supports "G" as set forth in the patent papers of Brown, were as I remember closed against the wall of the car when not in use.

Q. I am not asking about the support "G," but about the upper berths themselves. Were they or were they not fastened to the side of the car by any permanent hinges?

A. The upper berths were not fastened to the side of the car by any permanent hinges. The lower frame of the berth was set into a let-down from a slot and set into a slot of the necessary height below to receive it in order to make the berth bottom perfectly horizontal.

Q. Describe, in your own language more definitely what was the process when the berth was to be taken from its location and opened, and then when it was to be taken from its open position and closed.

A. The upper berth was opened by pulling the catch on the bottom of the berth from the slot in which it rested and letting it drop about eighteen inches to another slot, in which it was fixed or rested.

1326 Q. Are you referring now to the back of the berth?

A. I am referring to the back.

Q. That was the method of opening the upper berth in the Cen-

tral Transportation cars of which you have spoken, I understand you to say?

A. Yes, sir.

Q. In what ways have the berths of the Pullman cars been opened, and what is the method of constructing those?

A. The Pullman berth is fastened to the wall of the car at the inside lower rail of the berth bottom by two hinges.

Q. Have the Pullman berths at any time been so related to the cars as not to be fastened at the side of the car at any time?

A. They never have.

Q. Do you know that to be the fact?

A. I know that to be the case with all the Pullman equipment that I have seen.

Q. And what Pullman equipment have you seen?

A. I have seen a greater part of the cars built by the Pullman Company being familiar with their construction and the devices that are used in them.

Q. Are we to understand your testimony therefore to be that Pullman's Palace Car Company has or has not used any of the essential devices described in those letters patent?

(Objected to as before, because the witness is not a patent expert.)

A. This device has never been used in any of the Pullman cars that I have ever seen, nor have I ever heard of it being used.

1327 Q. When you say "this device," you mean the device of the Brown patent?

A. I mean the device as shown by the drawings you have handed me.

Cross-examined.

By Mr. PRICHARD:

Q. You do not of course, profess to be an expert on the subject of patents?

A. I do not.

Q. You have based your testimony upon a comparison of the drawings before you with the Pullman cars, of which as you say you have a very thorough knowledge?

A. Yes, sir.

Q. You do not profess of course to put a legal construction on the claims of the patent which those drawings accompanied?

A. I do not.

Q. Have you any knowledge with regard to the litigation which prior to the lease of the Central Transportation Company by the Pullman Company was going on with regard to this patent?

(Objected to, because the question assumes a fact without having it established, to wit: that there was litigation going on in respect to this patent.)

A. Nothing further than in a general way.

Q. You are not familiar with the claims that were made against

the Pullman Company under that patent or the defenses which were set up by the Pullman Company, are you?

A. I am not.

1328 Re-examined.

By Mr. WINTERSTEEN:

Q. Mr. Prichard has asked you in cross-examination whether the knowledge on which you have testified is based upon an examination of those drawings. Are we to understand you to say that your testimony is based solely upon an examination of these drawings, or upon your contact with the cars themselves?

A. My testimony is based entirely on the information that I have gotten from the practical operation of the Pullman cars and my observation of them, and the information given concerning the upper berths in the Central Transportation cars is from my observation of them while standing in the storage yards, as explained heretofore.

Adjourned.

1329 Circuit Court of the United States, Eastern District of Pennsylvania.

THE PULLMAN'S PALACE CAR COMPANY
vs.
THE CENTRAL TRANSPORTATION COMPANY.

DECEMBER 18, 1894.

BUTLER, *J.*:

The Central Transportation Company, a Pennsylvania corporation, chartered December 30th, 1862, with a capital of $200,000, authorized to construct sleeping cars and run them under contract with such railroad companies as might contract with it, entered upon the exercise of its franchises, built cars, and operated them in pursuance of such contracts. At this time the sleeping-car business was in its infancy; but soon a great demand arose for such cars, and with the improvements made from time to time for the accommodation and comfort of travelers using them, it quickly became profitable. The business of this company so increased that in 1865 an enlargement of its capital became necessary, and under authority of the laws of the State it was made $2,000,000. From that time forward its earnings and net profits appeared to have been large. By 1870 it had become the owner of one hundred and nineteen cars, with their equipments, at a cost, including repairs, of over a million and a half dollars; was the licensee of various patents for such cars, and the owner of others, on account of which it had paid (probably) half of a million of dollars; it had also acquired valuable contracts with many railroad companies, whose roads mainly traversed
1330 the country between the Mississippi river and the Atlantic ocean, forming an important and valuable system on which to prosecute its business of operating sleeping cars.

The Pullman Company was incorporated in 1867, having similar franchises, and was engaged in the same business, with an original capital of $1,250,000, which was increased two years later to $1,750,000. It also had prospered, and in 1870 was the owner of many cars, which it operated under contracts with various railroad companies, mainly in the western sections of the country.

At this time controversy arose and litigation commenced between the parties; and in view of the situation they mutually agreed that a union and consolidation of the two systems and their business was desirable. In consequence, on February 17th, 1870, a lease of the property and business of the Central Transportation Company to the Pullman Company was agreed upon and executed, the rent being fixed at $264,000 per annum, subject to specified contingencies.

Shortly before entering into the lease the Central Transportation Company purchased the patents under which it had previously paid royalties as licensee for the sum of $266,000, thereby adding this much to the cost value of the property transferred.

The question having arisen respecting the authority of the Central Transportation Company to make the proposed lease, application was made to the legislature of Pennsylvania, at the instance of both parties, on this account, and the following statute, dated February 9th, 1870, was passed:

1331 "Be it enacted * * * That the charter of the Central Transportation Company * * * be and the same is hereby extended for ninety-nine years from the expiration of its present charter; and said company is hereby empowered to enter into contracts with corporations of this State, or any other, for the leasing or hiring, and transfer to them of their railway cars and other personal property; and shall have power to increase their present capital stock $200,000."

Exhibit "A," attached to the original bill, is a copy of the lease, to which we need not at present make further reference.

The Pullman Company took possession of the property and business transferred, consolidating it with its own, thereby creating one harmonious system of sleeping-car transportation that extended throughout the country. Some of the cars received were subsequently sold, as unsuited to existing requirements of the lessee's business, and others were abandoned as worn out. Some of the railroad contracts were replaced by new ones taken in the name of the Pullman Company, and some were canceled. The evidence seems to warrant the defendant's statement that "of the one hundred and nineteen cars transferred five have disappeared without compensation to the Pullman Company, seventy-seven (77) have been sold, that thirty-seven are on hand; and that a total of seven hundred and thirteen thousand three hundred and thirty-four dollars has been received by the Pullman Company" on account of the sales. The car equipments have disappeared. Whether

1332 this statement is entirely accurate is not important at this time. Pullman cars and equipments have taken the place of the cars and equipments of the Central Transportation Company, and the property and business of the latter company are completely

merged in the property and business of the former—as the parties no doubt contemplated they should be when executing the lease. The consolidation intended of the interests and prospects of the two companies could not otherwise be accomplished. The effect of uniting the business in the Pullman Company appears to have fully justified the expectation of the parties. The increase of profits over the separate earnings of the two companies was immediate, continued, and very large.

The Pullman Company paid the stipulated rent as it matured until January, 1885, when a dispute arose between the parties (the nature of which is unimportant here), and further payments were refused. The Central Transportation Company sued for the next installment and recovered a judgment, which was reversed. A second suit being commenced for the following installment, the defendant repudiated the lease by pleas denying its validity, as in excess of the lessor's authority and against public policy. This defense was sustained in the court below, and also in the supreme court. While the case was pending, the Pullman Company filed the original bill now before us, praying an injunction against further prosecution of the suit, and against bringing other suits for subsequent installments, setting up as grounds for equitable interference (in substance), first, that the net earnings of the
1333 business have fallen below $264,000, and that the company, therefore, desired to surrender the lease in pursuance of its terms; that it was impossible to restore the cars and equipments, or reassign the contracts, and that, therefore, the aid of a court of equity was necessary to ascertain what compensation shall be made; and second, that the lease is invalid, because the lessor had no authority to make it, and consequently that the Pullman Company was under no obligation except to return such part of the property as could be returned, and render compensation for what could not; that it desired to do this, and needed the court's aid in the premises.

After hearing the parties the court declined to interfere with the suit pending, on the ground that the validity of the contract could be there tried as well as in equity, but enjoined against bringing other suits for subsequent installments.

After the decision referred to had been rendered, the plaintiff moved for leave to discontinue the bill, and the defendant for leave to file a cross-bill to enforce return of the property or compel compensation. The first of these motions was dismissed and the second allowed.

Many facts which may be important in a subsequent stage of the case are omitted here as unimportant.

The Pullman Company's answer to the cross-bill denying responsibility for the property received, raises the principal question before us. The denial rests on the fact that the property was transferred under an unlawful contract.

1334 The following propositions respecting such contracts may be affirmed with confidence; first, that the courts will not enforce them; second, that the courts will not interfere for the relief of either party when they have been executed; third, that the

courts will interfere to compel restitution of property received under such a contract by one who repudiates it, except when the contract involves moral turpitude. These propositions find ample support from the text-writers and the courts. The third only is involved here; and omitting what is embraced by the exception, it is indisputable. What constitutes "moral turpitude," or what will be held such, is not entirely clear. A contract to promote crime certainly involves it. A contract to promote public wrong short of crime may or may not involve it. If parties intend such wrong as where they conspire against the public interests by agreeing to violate the law or some rule of public policy, the act doubtless involves moral turpitude. When no wrong is contemplated, but is unintentionally committed through error of judgment, it is otherwise. "Turpitude" is defined by Webster to be "inherent baseness or vileness of principle, or actions; shameful wickedness." No unintentional wrong or improper act innocent in purpose can involve it. When individuals or corporations enter into contract in excess of authority, or violate some rule of law unintentionally, the act does not involve moral wrong, much less turpitude. The subject has been much before the courts, and while loose and misleading expressions appear occasionally, the decisions are all reconcilable with this state-
1335 ment. The numerous cases cited by the plaintiff present no exception. Bank *v.* Owens, 2 Pet., 538, decides only that the courts will not enforce an unlawful contract. Wheeler *v.* Sage, 1 Wall., 518, is altogether inapplicable. Coppell *v.* Hall, 7 Wall., 542, was a suit, substantially, for the fruits of an unlawful contract. St. Louis Railroad Company *v.* Terra Haute Railroad Company, 145 U. S., 393, decides that the court will not set aside an unlawful contract which has been so far executed as to make this inequitable. Higgins *v.* McCrea, 116 U. S., 671, decides that the defendant's counter-claim for money expended in promoting an "offense against the law" cannot be recovered. In King *v.* Green, 6 Allen, 139, the contract was fully executed, and the court, therefore, refused to interfere. Atwood *v.* Fisk, 101 Mass., 363, was a bill to recover property parted with under an unlawful contract, while the plaintiff held the consideration. In Johnson *v.* Hulings, 103 Pa. St., 493, the plaintiff's cause of action rested on an unlawful consideration—compensation for selling property in violation of the license laws. Myers *v.* Meinrath, 101 Mass., 366, is identical with King *v.* Green, 6 Allen, 139, being a suit to recover back property parted with under an executed contract. Thomas *v.* City of Richmond, 12 Wall., 349, was a suit to enforce an illegal contract, and Brown *v.* Tarkington, 3 Wall., 377, is the same in principle. Dent *v.* Furgeson, 132 S., 50, decides that "where one transfers property to defraud creditors, and for years acquiesces, concurring in devices, collusive suits and impositions on court, to further the pur-
1336 pose," equity will not aid him to recover back. Clements *v.* Yturria, 81 N. Y., 290; Holt *v.* Green, 73 Pa. St., 200; Thompson *v.* Thompson, 7 Vesey, 473; Sykes *v.* Bradon, 11 Ch. Div., 193; Snell *v.* Dwight, 120 Mass., 15; were all suits to enforce illegal contracts.

It is thus seen that not one of these cases is inconsistent with the proposition stated.

On the other hand, Morawetz on Corp., at sec. 721, says, "The general rule is that if an agreement is legally void and unenforceable by reason of some statutory or common-law prohibition, either party to the agreement who has received anything from the other party, and has failed to perform the agreement on his part, must account to the latter for what has been so received. Under these circumstances the courts will grant relief irrespective of the invalid agreement, unless it involves some positive immorality, or there are other reasons of public policy why the courts should refuse to grant any relief in the case." In a foot-note he says: "It is sometimes said to be a maxim *in pari delicto melior est conditio possidentis.* The word *delicto*, in this instance, however, means something more than mere illegality. It is difficult to define what constitutes such a morality as will cause the courts not only to declare a contract legally void, but to refuse all relief to the parties, irrespective of the contract. The decisions indicate that the matter rests largely in the discretion of the court in each particular case."

"Persons who, at the expense of a corporation, have re-
1337 ceived benefit from an *ultra vires* transaction, even a transaction that is illegal as against public policy, may have to refund to the corporation to the extent of the benefit they have received."

Taylor on the Law of Private Corporations, sec. 314, says: "The general rule in regard to contracts which are not immoral, or where there are no other reasons of public policy why courts should refuse to grant relief, but are simply illegal and unenforceable on account of some statutory or common-law prohibition, is that either party to them who has received anything from the other party and has failed to perform the agreement on his part, must account to the other for what has been so received. * * * These principles have been repeatedly applied in actions growing out of contracts entered into by corporations. Though illegal and unenforceable as contracts, recovery of the consideration has generally been allowed where higher public considerations than the immediate equities between the parties were not involved."

Spelling on Priv. Corp., sec. 167, says: "Why should not a corporation be always liable to refund the money or property of a person which it has obtained improperly and without consideration, or if unable to return it, to pay for the benefit obtained thereby? To say that a corporation cannot sue or be sued upon an *ultra vires* arrangement is one thing. To say that it may retain the proceeds thereof, which have come into its possession, without making any
compensation whatever to the person from whom it has ob-
1338 tained them, is something very different, and savors very much of an inducement to fraud. On the other hand, a person who has obtained corporate property or funds in an *ultra vires* transaction, has obtained what the parties dealing with him had no power, no authority to alienate. It belongs to the corporation, not to him. Therefore, as in every case of a person obtaining,

however *bona fide*, that which belongs to another, such person must make restoration in specie or in value, it seems necessarily to follow that restoration must similarly be made when the alienation was *ultra vires*."

Waterman on Corp., sec. 161, page 608, says: "Though a corporation cannot be sued, any more than any other citizen, directly upon a contract or analogous transaction which does not bind it, yet if it sets up this defense, it must restore to the other party what it has obtained from him. It may repudiate the transaction, if it chooses, but if so, it must repudiate altogether; it cannot reprobate and approbate; it cannot keep what in another form it has rejected."

The case of Congress, etc., Spring Co. *v.* Knowlton, 103 U. S., 49, is worthy of particular notice. The suit was for property parted with under an unlawful executory contract. The court, after remarking on the absence of moral turpitude, says: "The question is whether, conceding the contract to be unlawful, the property parted with under it can be recovered back from the other who has not performed." The court holds that it may be, and attributes
1339 importance to the plaintiff's ignorance of the unlawfulness.

Parkersburg *v.* Brown, 106 U. S., 487, is to the same effect. Here, again, the court points to the fact that the illegal transaction is free from moral turpitude, and says: "But notwithstanding the invalidity of the bonds and of the trust, the O'Briens had a right to reclaim the property and to call on the city to account for it. The enforcement of such right is not in affirmance of the illegal contract, but is in disaffirmance of it, and seeks to prevent the city from retaining the benefit which it has derived from the unlawful act." * * * "To deny a remedy to reclaim it is to give effect to the illegal contract. The illegality of that contract does not arise from any moral turpitude." * * * "In such a case, the party receiving may be made to refund to the person from whom he has received property for the unauthorized purpose, the value of that which it has actually received. See White *v.* Franklin Bank, 22 Pick., (Mass.,) 181; Morville *v.* American Tract Society, 123 Mass., 129; Davis *v.* Old Colony Railroad, 131 *id.*, 258, 275; and cases there cited. The O'Briens having endorsed and sold the bonds the holders succeeded to such rights of the O'Briens as an incident to the ownership of the bonds. The O'Briens suffered the city to take possession of and administer the property. They were made parties to this suit originally, and have made no defense to it. The right which the plaintiffs so have to call on the city to render an account of the property is one which can be properly adjudicated in this suit in equity."

1340 In Central Transportation Company *v.* Pullman's Company, 139 U. S., 24, (where the contract now under consideration was involved), the court said: "A contract *ultra vires* being unlawful and void, not because in itself immoral, but because the corporation by the law of its creation, is incapable of making it, the courts while refusing to maintain any action upon the unlawful contract, have always striven to do justice between the parties, so far as could

be done consistently with adherence to law, by permitting property or money, parted with on the faith of the unlawful contract, to be recovered back, or compensation to be made for it."

"In such case, the action is not maintained on the unlawful contract, nor according to its terms, but on an implied contract of the defendant to return, or failing to do that, to make compensation for, property or money which it has no right to retain. To maintain such an action is not to affirm, but disaffirm, the unlawful contract."

In Logan County Bank *v.* Townsend, 139 U. S., 67, the bank was required to refund property received under an unlawful executory contract, the court saying: "The bank admitting that it obtained the property in violation of law is bound to return it. The obligation to do justice as we said in March *v.* Fulton, 10 Wall., 676, rests upon all persons natural and artificial, and if one obtains the property of another without consideration or authority of law, he will be compelled to make restitution. * * * This is a very different thing from enforcing an illegal contract." Tel. Co. *v.* R.
1341 R. Co., 1 McCrea, 188; Farmers' Loan Co. *v.* R. R. Co., 1 McCrea, 247; Tel. Co. *v.* Union Pacific R. R. Co., 1 McCrea, 558; Railroad Company *v.* Simpson, 23 Fed. Rep., 214, and Railroad Company *v.* Concord Railroad Company, 20 Atlantic Rep., 383; are to the same effect. It seems to be true that the distinction between *malum prohibitum* and *malum in se* (which never had the support of just reason) has disappeared. This, however, is unimportant. The distinction never had any legitimate bearing on the question.

Thus it follows that unless the execution of the contract between the Central Transportation Company and the Pullman Palace Car Company involves moral turpitude, as before described, the former may recover back the property parted with under it. That it does not involve such turpitude seems clear. Neither party contemplated any wrong. Both believed the contract to be lawful. The statute of 1870 was supposed to confer full authority to make it. The State had unquestionable power to grant the authority; and the evidence shows that the statute was procured for the express purpose of granting it. The question whether the statute did or did not grant it was a close and difficult one. The learned counsel of the parties and the court disagreed on the subject. It was a question of interpretation. In the court's view the lease was *ultra vires* and void; in the counsel's it was authorized and lawful. True, it violated a rule of public policy, but this was only because the court construed the statute more narrowly than the legal advisers of the parties had done. The legislature is the judge of what
1342 the public interests require in the premises, and if it had authorized the lease, as the parties honestly believed it had, no question of public policy could have arisen. All that can justly be said, therefore, is that the parties misconstrued their authority, and that the lease is consequently *ultra vires*. Whether the lease actually tended to the public disadvantage may be doubted, in view of the evidence. Certainly the Pullman's Palace Car Company

cannot assert that it did, against its own unqualified declaration to the contrary found in the lease. It would seem difficult to state a case more distinctly and completely within the principle invoked than the one before us. The right to restitution is indeed distinctly admitted by the original bill in this case.

The property must, therefore, be returned or paid for. The former is impossible. The property has substantially disappeared. It has become incorporated with the business and property of the plaintiff, and cannot be separated. Compensation must, therefore, be made. What then is the measure of compensation? Clearly, we think the value of the property when received, together with its earnings since, less the amount paid as rent. In ascertaining the value, the annual rental may be considered; but it does not afford a conclusive, nor entirely safe measure of value, because the unlawful consideration (that the Central Company would abstain from exercising its franchises) entered into it. For the same reason the earnings cannot be measured by the rent. The value of the property and earnings must be ascertained from a careful exam-
1343 ination of the property, the business and its earnings at the time they passed into plaintiff's hands, and subsequently. It is not their value to the plaintiff we want, but to the defendant. In effect, what it lost by parting with them. The value of both property and earnings may have been worth more to the plaintiff with the businesses united. But this cannot be considered.

For the purpose of ascertaining these values, the court refers the subject to Theodore M. Etting, Esq., as master, with direction to report within sixty days (from the testimony taken and such further as may be produced), unless the time shall be extended by agreement of counsel, or on application to the court.

The question of jurisdiction need not be discussed. The character of the relief required and the nature of the inquiry necessary to afford it, puts this beyond controversy. Besides, the point is conceded by the bill originally filed.

The propriety of allowing the defendant to file a cross-bill may rest upon what was said when the allowance was granted.

Dallas, C. J., concurs.

1344 THURSDAY, *December* 27, 1894.

Meeting held before the master, Theodore M. Etting, Esq., 725 Drexel building, Philadelphia, Pa., on Thursday, December 27, 1894, at eleven o'clock a. m., there being present:

The master, Mr. Etting.

Judge Isham and Mr. Wintersteen, counsel for plaintiff.

Mr. Prichard, counsel for defendant.

Mr. Prichard states that, as at present advised, he does not contemplate the taking of testimony.

Judge Isham states that plaintiff proposes taking testimony, but that his professional engagements are such as that it will be impossible to name a day for meeting earlier than January 25, 1895, at three o'clock p. m., but he hopes it may be possible at a subsequent

time to fix an earlier date, and, if he is able to do so, he will fix such earlier date.

FRIDAY, *January* 25, 1895.

Meeting postponed by agreement, until Tuesday, February 19, 1895, at 2 o'clock p. m.

TUESDAY, *February* 19, 1895.

Meeting held before the master, Theodore M. Etting, Esq., on Tuesday, February 19, 1895, at two o'clock p. m., there being present:
Robert T. Lincoln and A. H. Wintersteen, Esqs., for plaintiff.
F. P. Prichard, Esq., for defendant.

DOLPHUS TORREY, having been duly sworn, was examined as follows:

1345 By Mr. LINCOLN:

Q. You have testified before in this case, I believe?

A. I have.

Q. State briefly your connection with the Central Transportation Company, and, later, with the Pullman Palace Car Company, parties in this cause.

A. In December, 1868, I was nominated to and accepted the position of assistant general superintendent of the Central Transportation Company, of which Jonah Woodruff was general superintendent, and I continued in that position until the property was transferred to the Pullman Palace Car Company, which took place in February, 1870, as of January 1, 1870. I was then designated as superintendent of the C. T. or Central Transportation division of the Pullman Palace Car Company, and continued in that position until some time in May or June, 1875. In the meantime the designation of the division was changed from that of Central Transportation division to Central division at some uncertain date. By examining a bound volume which appears as "Schedules of Lines Central Division P. P. C. Co.," from No. 1 to No. 51, which schedules were published from time to time as changes in the arrangement of cars were made due to changes of schedules by the railroad companies, I find that the schedule of lines issued June 15, 1871, is signed by me as superintendent of the C. T. division, while the one of August 21, 1871, is signed by me as superintendent of the Central division. So within those dates some time the designation of the division was changed.

1346 Q. Did you take steps on entering the service of the Central Transportation Company to familiarize yourself with the history and condition of the cars then owned by it, and, if so, what did you do in that respect?

A. When I entered the service, in December, 1868, I found that there were no records or memorandums of the cars other than, of course, the financial account of receipts and disbursements; that the general superintendent, Mr. Woodruff, had no kind of record, practically no blanks for taking an account of business. The business was done at hap as we would say in a slang manner, and I, having to master a detailed knowledge of the business, obtained a small

diary, which is this book, (indicating,) in which I set apart each two pages to a car number, and had them printed at a printing office, and running consecutively by number from one up to the full capacity of the book. As I met Mr. Woodruff or his predecessor, George Dykeman, or any of the local superintendents, or anybody that had any knowledge, the president of the company, O. W. Childs, I would ask any one about the cars and make notes and memorandums in regard to it, so that during the year I accumulated a brief memorandum in regard to each car so that I knew a good deal about it, and that memorandum was elaborated in subsequent books year by year and added to, so that long before I left the service of the Pullman Company I had quite an elaborate history of all those cars.

Q. I will ask you now to look at a book which I will call, simply for identification in speaking of it hereafter, "Torrey Memoranda of Cars," and state what that is?

1347 A. This book is in manuscript, and has a title page which reads: "Pullman Palace Car Company, Central Transportation division; record of operations in 1870."

Q. By whom was that book prepared?

A. This book was prepared by myself, but the manual labor of writing it out was done by clerks in my office; but it is as fully mine as if I had done the penmanship work on it. The compilation of this book was brought about by the fact that the officers in Chicago were not familiar with the Central division, and to educate them in the matter and meet their wants I compiled it, and I find on page 5 the letter of transmission to A. B. Pullman, the general superintendent at Chicago.

Q. When was that letter written?

A. This letter was written within the first two or three months of 1871. I recall in a vague way the circumstance that the book was forwarded to Chicago without receiving my preparatory signature.

Q. I will ask you now to make a brief statement of what is comprised in that book.

A. The letter of transmission I guess covers it:

"I have compiled a memoranda history of each car transferred to this company by the lease of the C. T. Company's equipment, &c., for your information in this respect, and have appended annual statements containing a variety of information which I think may prove of service to you."

That is a paragraph of the letter. There follows, commencing with page 7, with a side title giving car number, a written

1348 paragraph, which summed up to that time this memoranda history which I had been making, substantially. There may be a clerical omission of words here and there, but it takes the cars serially from No. 1 to No. 119, and states where they were rebuilt, when remodeled, and other information which might prove of use in regard to them.

Q. What class of information follows that in the book?

A. The next commences on page 34:

"A statement of new cars received in the C. T. division in 1870,

giving date of car, by whom built, style of car, and where running."

Q. That refers to the Pullman cars, of course?

A. All cars received in 1870 were Pullman cars. On page 37 is a statement of wild and borrowed cars run on the C. T. division in 1870, cars which came in to meet the requirements of the service, and which in the operations of business might be taken away again when there was an opportunity to fill their places by cars which would be considered assigned within the division. That gives the name of the car, commencing and closing date of service, where run, and remarks.

Q. This list of cars coming into the division in 1870 gives them by number?

A. Yes, sir.

Q. You find later on a list giving the names to which those numbers were applicable, do you not?

A. I believe there is. On page 61 is a statement:

"List of names of cars Nos. 120 to 186, inclusive."

1349 Q. State what was the way in which the Pullman cars were numbered and named in the Central division, if you recollect?

A. The Pullman service in all other portions of the country operated cars under names. In the Central Transportation division the cars while named, bore numbers, and I pursued the course of assigning numbers to any cars which came into my service to stay.

Q. Beginning with what number for those cars?

A. That began with No. 120, because No. 119 finished the old C. T. cars.

Q. What was the practice, in case a car with a given name coming in and being run under a certain number should leave the division, what was done in that case?

A. There were several instances where relations were a little mixed, arising from the practice of the different parts of the country. After a car left the division, if it had a number—it might be run by name and number both, although all their reports and official papers were made by name—where there was foreseen just what was going to be required, in order to distribute numbers so that the equipment of a road would run with a series of connections, consecutive numbers, there would be that many numbers set apart on the road, and what cars were on that were called by those numbers.

Q. Supposing a car with one name started running as No. so and so, and that particular car having that name left the division, and another car came to take its place, what happened with regard to that?

1350 A. The old number was maintained within the division, and the car coming in to take the place of it received the number that the former car had had. That took place in one or two cases.

Q. Please examine the larger of those two red books, and state what it is?

A. This is a record of all the cars in the division, giving their number, name, by whom built, to what road assigned, the date they commenced service, the style of car, and its subdivisions, as to the number of open sections, state-rooms, drawing-rooms, single berths, double berths, capacity, its length, its width at the eaves, its height at the trucks, at the center and outside, style of platform and style of trucks, as to the wheels, wide or narrow tread, and all those particulars, and then, on the opposite page, against that descriptive account of the car was a historical memorandum, based primarily on these records which I have referred to before, but carried down to later dates. It is quite a large book, and it lasted for many years.

Q. That is, when you say carrying down those memoranda which you mentioned before, you refer now to the Central Transportation Company cars?

A. Yes, sir. For instance, in my earlier testimony I spoke of the years 1869 and 1870. Now, this book containing the general description of cars was prepared under my direction, and may be considered as my book while I remained with the Pullman Company, until 1875. The additions to it and the extensions thereafter following, of course, are not my work.

1351 Q. After the 119 numbers assigned to the Central Transportation Company cars that book contains what?

A. Glancing at it in a general way it runs up here to nearly four hundred numbers, and, therefore, we may say there are two or three hundred cars in here subsequent to the Central Transportation numbers.

Q. Beginning with No. 120 and running along?

A. Yes, sir; beginning where the Central Transportation closed; beginning at No. 120 and then continuing through. It is a book of four hundred numbers, eight hundred pages.

Q. Not all of which are, however, filled up, are they?

A. I have not of course examined that, but substantially they are filled.

Q. The last book which you mentioned, containing the description of cars, so far as it goes down through the year 1870, is substantially the same as that memoranda history that you first spoke of?

A. Yes, sir.

Q. But is as to the Central Transportation Company cars continued on for later years?

A. Yes, sir.

Q. Please furnish a history from that book of the 119 Central Transportation Company cars?

A. I present here a transcription of the history from the description of cars No. 1 to No. 119, of the Central Transportation Company, which has been prepared under the direction of the Pullman

1352 Company's counsel in this case, which I suppose to be an accurate transcription, and present it subject to correction on comparison with the books. I should say that what I am now presenting does not contain a history of car No. 44, which in some way seems to have been omitted from the description of cars, but I am

able to furnish that through the year 1870 from the book which I first mentioned, made up under my supervision, called the "Memoranda of Cars," and I include it in the number. It was a clerical oversight, undoubtedly, in writing out the description of cars.

(The history of Central Transportation Company cars from No. 1 to 119 inclusive, all taken from book called "Pullman Palace Car Co., Central Division, Description of Cars," excepting that of car No. 44, which is taken from "Memoranda History of Cars," by the witness, will be found attached at the end of this deposition.)

Q. Please examine your diary book of memoranda which you mentioned and state if there is any description, or any history in it of car No. 2, which is not in the description of cars, and, if so, please give it.

A. My memorandum of car No. 2 reads:

"Built by Murphy & Allison. Delivered March 12, 1859. Originally car B."

Q. Do I understand you that would be a car preceding the one given as No. 2 in the description of cars, of which the date of origin is 1866?

A. There is a little indistinctness in the matter. I see after the memorandum saying "Originally car B," it says, "Built at West Philadelphia in the fall of 1866." Now I assume that would be rebuilt, as I have no notice of its destruction.

1353 Q. Look and see what is said in those notes of yours now about car No. 3.

A. Car No. 3 was built by Murphy & Allison, and delivered the 25th day of March, 1859. Originally car C. Burned at bridge No. 8, near Tyrone, January 17, 1864. Rebuilt as No. 3 by Bolton, Dykeman & Co., and delivered April 15, 1864.

Q. Give any information which you have of this character in respect to car No. 4.

A. Built by Murphy & Allison, and delivered the 29th day of March, 1859. Originally car D. Shopped at Altoona, the 21st of December, 1859, and delivered the 4th day of February, 1860. Then there seems to be a little slip. It says: "Car No. 4, built at Altoona in 1865. Rebuilt at West Philadelphia, and delivered February 1, 1869, as the silver palace car Mayflower."

Q. What do those special notes of yours give respecting car No. 7?

A. Car No. 7 was built by Wasson & Company, and delivered in 1857, the date not given. Originally car A. Burned at Lancaster the 27th day of February, 1865. Rebuilt at Altoona, March 1, 1866, as the City of Lancaster.

Q. What is given respecting car No. 9?

A. Built by Kimball & Gordon, and delivered the 7th day of March, 1860. Originally car I. Burned at bridge No. 8, near Tyrone, on the 17th day of January, 1864. Rebuilt as No. 9, and delivered by Bolton, Dykeman & Co. on the 15th day of April, 1864, as City of Newark.

Q. What is given with respect to car No. 10?

1354 A. Car No. 10 was built by Kimball & Gordon, and delivered the 7th day of March, 1860. Built at West Philadelphia, 9 | 1, which would be September 1, 1865. Originally car J, the Quaker City.

Q. What do your notes give as to car No. 19?

A. As car F it was built by J. R. Bolton, and delivered July 11, 1863. Shopped at West Philadelphia, May 11, 1869, and broken up.

Q. By whom were cars No. 20 and No. 21 built?

A. Car No. 20, as car T, was built by J. R. Bolton, and delivered the 1st day of August, 1863, and rebuilt at the Pittsburg shops in 1869. Car No. 21, as car U, was built by J. R. Bolton, and delivered the 12th day of September, 1863.

Q. When was car No. 22 built?

A. Car No. 22, as car V, was built by J. R. Bolton, and delivered on the 12th day of September, 1863, and then I see again below "Built at Altoona, July 6, 1868." I do not know what that is. This memorandum will bring it out more fully.

Q. What special history have you respecting cars No. 28, No. 29 and No. 30?

A. Taking them in their order, car No. 28, as No. 3, was built by Murphy, Allison & Co. for E. C. Knight in 1861, and remodeled at Washington as sleeping car City of Wheeling.

Car No. 29, as No. 8, was built by Murphy & Allison for E. C. Knight, and burned by the rebels on the 3d day of May, 1864. Rebuilt by Bolton, Dykeman & Co. the 25th day of September, 1865, and repaired by the Pennsylvania Railroad Company, West Philadelphia, in 1867.

1355 Car No. 30, as car 9, was built by Murphy & Allison for E. C. Knight, being burned by the rebels October 14, 1864. It was rebuilt by Bolton, Dykeman & Co. the 25th day of September, 1865, burned at Mill Creek on the 31st day of January, 1868, and replaced by the rebuilding of a directors' car of the Pennsylvania Railroad Company at Altoona in May, 1868.

Q. State what special information you have respecting cars No. 32 and No. 33?

A. Car No. 32 was No. 4, built by Murphy & Allison for E. C. Knight. It was sold to the P., W. & B. Railroad Company, and purchased the 1st day of May, 1864. The berths were rebuilt at West Philadelphia on the 6th day of June, 1865. It was burned at Elmira and was rebuilt at York in September, 1868.

Q. When you say "purchased" you mean purchased by the Central Transportation Company from the Philadelphia, Wilmington and Baltimore Company?

A. Yes, sir; due to the merging and rearranging of contracts in the early years of the Central Transportation Company, long before my time.

Car No. 33, as car No. 5, was built for E. C. Knight. It was sold to the P., W. & B. Railroad Company, and purchased the 1st day of May, 1864. Berths rebuilt at West Philadelphia the 6th day of June, 1865. Named the City of Cumberland.

Q. It was purchased by the Central Transportation Company?

A. Yes, sir; I suppose if you looked up the contracts per-
1356 taining to the organization of the Central Transportation Company you would find it.

Q. In the description of cars, and also in your memoranda of cars, I observe car No. 43 is marked as being built December 25, 1865. Have you any remarks to make on that?

A. My memorandum book says December 25, 1864, and I assume that is a clerical error, because its companion car was December 25, 1864. The two would come out together, probably.

Q. Examine your memoranda respecting car No. 98, and give the complete history of that, so far as you can.

A. Car No. 98 is entered on my memorandum book as out new January 13, 1870.

Q. I call your attention to the fact respecting that, that the description of cars gives that date as July 13, 1870.

A. That, I think, is a mistake, as I have it in two memorandum books "January." It was abbreviated "Jan'y." I think he is mistaken. I could probably by overhauling determine it.

Q. Do you know what car, if any, preceded it in that number?

A. Inferentially. It was built by the railroad company as a substitution for a wrecked car, Southern Transportation No. 12. Otherwise, No. 12 is not to be accounted for in any way whatever.

Q. That is, Southern Transportation Company car No. 12?

A. Yes, sir.

Q. The history of cars as already given by you gives
1357 car No. 59 as burned in 1870. Have you a memorandum which gives the date in the year of its burning?

A. My memorandum book for 1870 contains an entry that the car was burned in the yard of the Philadelphia and Erie railroad at Erie on April 3, 1870.

Q. Examine the smaller of those two red books and state what it is.

A. It contains what strictly was a continuation of the current reports of the condition of cars started in these memoranda books of mine. After the year 1870, when I had down all that in my pocket, I had this book printed, which does not give the narrative history of cars, but gives a description of them, and on the opposite page to each, for each month in the year, has a space wherein was entered by reference numbers the condition of the car, that it needed painting or varnishing inside or out, or that it needed this, that and the other of a series of some thirty specific requirements. There is a list probably in the book here somewheres of what those numbers mean. And they were entered in each month as a compilation from a report that I received from all the assistant superintendents, a report designated as the "service, style and condition report" of cars within their respective districts.

Q. That page divided into months covers what period of time?

A. It covers the two years of 1871 and 1872.

Q. And is that one of a series of books?

A. It is the first of a series of office books of the superintendent's office of the Central division.

1358 Q. That book contains a statement of the beginning of the service of any given car which did enter the service of the Pullman Company?

A. It has a blank space for that, unless it was by some clerical omission left out.

Q. That book was made in the ordinary course?

A. That book was made in the ordinary course as the first of its kind, and was of my devising.

Q. State, as I give you the numbers, the beginning of service of Pullman cars in this Central Transportation or Central division, and the continuous service of each car as it is named, beginning with car No. 130?

A. Car No. 130 was named the Plymouth, built by the Pittsburgh, Fort Wayne and Chicago Railway Company, assigned to the same road and commenced service February 2, 1871.

Q. I ask you with reference to the continuance of service of these cars respecting which I am asking you not further than the 1st of April, 1872. State in respect to this and all subsequent cars that I ask you about whether or not the car after entering the service as stated continued in the service of the division up to April 1, 1872?

A. Car No. 130 continued in service until long after 1872.

Q. State as to car No. 131.

A. That was a companion car to No. 130, built the same time, came out new February 5, 1871, assigned to the Pittsburgh, Fort Wayne and Chicago road, and continued in service until long after April, 1872.

Q. State as to car No. 138?

1359 A. Car No. 138 was named Highland, built by the Pennsylvania Railroad Company and assigned to the same company, came out new on the 18th day of February, 1871, and ran in the service in connection with that line until long after April, 1872.

Q. What as to car No. 139?

A. Car No. 139, the Cambria, was built by the Pennsylvania railroad and assigned to the same road, came out new January 14, 1871, from the Altoona shops, and continued in the service connected with the Pennsylvania road until long after April, 1872.

Car No. 140, named the Ligonier, was built by the Pennsylvania railroad, assigned to the same road, came out new on the 3d day of February, 1871, and continued in service until long after April, 1872.

The car No. 147, the Westerly, came into the division on the 13th day of November, 1870, and continued in it indefinitely long after April, 1872.

Q. Why did the car Westerly bear the number 147?

A. The car Westerly coming in from outside the division had come from the shop without number, but it received a number after a time and is reported as car No. 147.

Car No. 155 was named the Frederick, built by the Baltimore and Ohio Railroad Company and assigned to lines on that road. It came

out new the 13th of January, 1871, and continued in service until long after April, 1872.

Car No. 156 was named Potomac, and its history in other particulars is exactly the same as that of car No. 155. It cane out new the same date.

1360 Car No. 161 was named the Kensington, built by the P. W. & B. Railroad Company and assigned to the New York & Washington air line. It commenced service on the 22d of March, 1871, and continued in service until long after April, 1872.

Car No. 162 was a companion car built at the same shops and commenced service the same day, and continued long after April, 1872.

Car No. 167 was named the Decatur, built by the Toledo, Wabash & Western railroad, and assigned to the same road. It came out new on the 10th of February, 1871, and was continued in the service until long after April, 1872.

Car No. 168 was called the Tolono, built by the Toledo, Wabash & Western Railroad Company and assigned to the same road. It commenced service February 10, 1871, and continued until long after April, 1872.

Car No. 169 was called the Titusville, built by the Pennsylvania Railroad Company and assigned to the Pennsylvania Railroad Company. It came out new on the 25th day of March, 1871, and continued in service until long after April, 1872.

Car No. 170 was called the Harrisburg, built by the Pennsylvania Railroad Company and assigned to the same company. It came out new on the 13th day of April, from the Altoona shops in 1871, and continued in service until long after April, 1872.

Car No. 171 was called the Lancaster, built by the Pennsylvania Railroad Company and assigned to the same. It came out new from the shops at Altoona on the 5th day of May, 1871, and was in service until after April, 1872.

1361 No. 172 was called the Miami, built by the Pennsylvania Railroad Company and assigned to the same. It came new from the Altoona shops on the 15th of June, 1871, and continued in service until long after April, 1872.

Car No. 173 was called the Scioto, built by the Pennsylvania Railroad Company and assigned to that road. It came new from the shops on the 17th of July, 1871, and continued in service until long after April, 1872.

Car No. 174, was named the Xenia, built by the Pennsylvania Railroad Company and assigned to the same. It came new out of the Altoona shops the 26th day of July, 1871, and was in service until after April, 1872.

Car No. 175 was called the Tuscarora, built by the Pennsylvania Railroad Company and assigned to the same road. It came out of Altoona shops new August 19, 1871, and continued in service until long after April, 1872.

Car No. 176 was called the Licking, built by the Pennsylvania Railroad Company and assigned to the Pennsylvania Railroad Com-

pany. It came new out of the Altoona shops September 1, 1871, and was running until long after April, 1872.

Car No. 177 was called the Newark, built by the Pennsylvania railroad, and assigned to the same railroad. It was new out of the Altoona shops on the 7th of September, 1871, and was in service until long after April, 1872.

1362 Car No. 178, called the Kentucky, built by the Pennsylvania railroad and assigned to the same road, and the Fort Wayne railroad. New out of the Altoona shops on the 3d of October, 1871, and continued in service until after April, 1872.

Car No. 179, named Louisville, built by the Pennsylvania Railroad Company and assigned to the Pennsylvania Railroad Company, and Pan Handle. New out of the Altoona shops October 26, 1871, and continued in service long after April, 1872.

Car No. 180, named the Knoxville, built by the Pennsylvania railroad and assigned to the same. Came new out of the Altoona shops on the 15th day of November, 1871, and ran until long after April, 1872.

Car No. 181, called the Bristol, built by Harlan & Hollingsworth, assigned to the Pennsylvania railroad, received new from Wilmington on the 10th day of January, 1872, and was running all the balance of the year.

Car No. 182, the Conestoga, built by Harlan & Hollingsworth. There is no assignment designated here. It was received from the shops at Wilmington on the 18th day of March, 1872, and commenced service on the 24th day of March, 1872, and ran through the balance of the year.

Car No. 183, the Allegheny, built by Harlan & Hollingsworth at Wilmington. Came out of the shops on the 18th of March, 1872, arrived at Jersey City on the 21st, went into service on that date, and on the 25th went into shop at Altoona after being wrecked. Was out of the shop on May 13, 1872.

1363 Car No. 184 was the Mansfield, built by the Pittsburgh, Fort Wayne and Chicago railroad, and assigned to the same road. It was out of the Allegheny shops new the 6th of November, 1871.

Q. Do you know what happened to that car afterwards?

A. The car was destroyed by fire on the 21st day of March, 1872, near Fort Wayne.

Car No. 185, the Massillon, built by the Pittsburgh, Fort Wayne and Chicago railroad, and assigned to the same road. It was new out of the Allegheny shops on the 7th of November, 1871, and was running during 1872.

Car No. 186 was called the Renovo, built by the Philadelphia and Erie railroad, and assigned to the same road. It was new out of the Renovo shops May 23, 1871, and continued until long after April, 1872.

No. 187 was named the Paris. This record does not state who built the car. I think the Paris and Berlin were two cars that came from some shops in the Northwest, I do not know. It was assigned to the Pennsylvania railroad and arrived at Jersey City on

the 25th day of February, 1871. It was sent to the Altoona shops to change the platform—it had probably been built with the Miller platform, which the road did not use—and was out of the Altoona shops for service on the 15th of March, 1871. It was in a total wreck on the Pennsylvania railroad near Conemaugh on the 22d day of March, 1872.

Car No. 188, named the Berlin, was assigned to the Penn-
1364 sylvania railroad. It arrived at Jersey City on the 25th day of February, 1871. It went to Altoona to have the platforms changed, and came out of the shop on the 17th of March, 1871, and ran until long after April, 1872.

Car No. 189, called the Erie, was built by the Philadelphia and Erie railroad and assigned to the same railroad. It came out new from the Erie shops on the 23d of May, 1871, and was running until long after April, 1872.

Car No. 190, named the Mount Clare, built by the B. & O. railroad and assigned to the B. & O. railroad. It came out of the Mount Clare shops on the 15th of June, 1871, and continued in service until long after April, 1872.

Car No. 191, named the Bellaire, built by the B. & O. railroad and assigned to the same. It came new out of the Mount Clare shops on the 22d of June, 1871, and ran until long after April, 1872.

Car No. 192, the Piedmont, built by the B. & O. railroad and assigned to the same. It came out new from the Mount Clare shops on the 22d of July, 1871, and was running until long after 1872.

Car No. 193, the Cincinnati, built by the B. & O. railroad and assigned to the same. It came new out of the Mount Clare shops on the 22d of July, 1871, and was running until long after April, 1872.

Car No. 194, named the Virginia, built by the B. & O. railroad and assigned to the same. It came new out of the Mount Clare shops the 23d day of August, 1871, and was running long after April, 1872.

1365 Car No. 195, the Marietta, built by the B. & O. railroad and assigned to the same. Came new out of Mount Clare shops the 31st of August, 1871, and was running long after April, 1872.

Car No. 196, the Parkersburg, built by the B. & O. railroad and assigned to the same. New out of Mount Clare shops November 20, 1871, and was running long after April, 1872.

Car No. 197, the Cumberland, built by the B. & O. railroad and assigned to the same. Came new out of the Mount Clare shops the 18th day of November, 1871, and ran long after April, 1872.

Car No. 198, called the Martinsburg, built by the B. & O. and assigned to the same. Came new from the Mount Clare shops the 10th day of December, 1871, and was running until long after April, 1872.

Car No. 199, the Altamont, built by the B. & O. railroad and as-

signed to the same. Came new out of Mount Clare shops the 20th day of December, 1871, and was running long after April, 1872.

Car No. 200, called the Greenwood, built by the B. & O. and assigned to the same. Was new out of Mount Clare shops the 17th of January, 1872, and running long after April, 1872.

Car No. 201, the Kingwood, built by the Baltimore and Ohio railroad and assigned to the same. Came new out of the Mount Clare shops January 29, 1872, and ran long after April, 1872.

Car No. 202 was named the Central. The record here does not say where it was built, but that was owing to some clerical omission. It was a parlor car, named the Central. It was re-
1366 ceived from Chicago about the 20th of April, 1871, and sent to Altoona on the 25th day of April. It came out of the shops on the 15th day of May, 1871, with new trucks and platforms, and was running long after April, 1872. The record is not noted here, but it was assigned to the Pennsylvania railroad, I know.

Car No. 203 has the same history as car No. 202.

Car No. 204 was named the Connellsville, built by Harlan & Hollingsworth, and assigned to the Baltimore and Ohio. It was new out of the shops on the 23d of September, 1871, and continued in service after April, 1872.

Car No. 205 was named the Pittsburg, built by Harlan & Hollingsworth, and assigned to the Baltimore and Ohio. It came new out of the shops on the 23d day of September, 1871, and was running long after April, 1872.

Car No. 206 was named the Kearsarge. The memorandum says: "Came special from Chicago some date in September, 1871, and was shopped at Altoona from the 1st to the 18th of October, and assigned to the Pennsylvania railroad." It was running after April, 1872.

Car No. 213, a parlor car named Apollo, was received by transfer the 26th of December, 1871, and continued in service after April, 1872.

Car No. 214 was parlor car Newport. It was new out of the Altoona shops the 10th of February, 1872, and continued in service after April, 1872.

Car No. 215 was parlor car Saratoga. It was new out of the Altoona shops the 22d of February, 1872, and continued after April, 1872.

1367 Car No. 216 was parlor car Mercury. It was new out of the shops the 29th day of March, 1872, and continued through the year.

Car No. 217 was parlor car Venus, new out of the shops the 29th of March, 1872, and continued through the year.

Car No. 218 was the Adirondack, and new out of the shops on the 23d day of March, 1872. It was brought here from the Detroit shops and was corrected for the Pennsylvania Railroad service. It came out of the shops for service on the 23d of March, 1872, and continued through the year.

Q. It came a new car, did it?

A. Yes, sir. The memorandum says: "Built at Detroit, out

new, March 1872, and received at this division March 20, 1872; shopped at Altoona March 21–23, for trucks."

Car No. 256 was the Planet. It was new out of the Columbus shops on the 13th of December, 1871, and continued in service after April, 1872.

Car No. 301 was the Comet. The record is very barren. It has never been filled up here apparently. It came into the division as a wild or borrowed car on the 12th of December, 1870, and was running until May, 1871, when the entry says, "Officially transferred to the P. P. Car Co., May 1."

Car No. 120 was called the Lammermoor, built by the Pennsylvania railroad. It came new from the West Philadelphia shops on the 22d of August, 1870, and ran on the New York & Chicago line for years.

1368 Car No. 121, the Melrose, came new from the Pennsylvania shops at Pittsburgh, August 26, 1870, and ran on the New York & Chicago line for years.

Car No. 122, the Waverly, came new from the Pittsburgh, Fort Wayne & Chicago Railway shops at Fort Wayne, on the 31st of March, 1870. It ran for years on the New York & Chicago line after April, 1872.

Car No. 123, the Ivanhoe, is a companion car to the other, and given in this book statement as coming out March 1, 1870, and on my personal memorandum is March 31st. Evidently that is a clerical mistake. Its history is exactly parallel to that of No. 122.

Q. Was it a new car when it came out?

A. Yes, sir. It continued in service until long after April, 1872.

Car No. 124, the Pennsylvania, came out March 1, 1870, running in the New York and Chicago line, built by the Fort Wayne road and assigned to that road. It continued to run for years, long after the date. None of those cars met with any catastrophe.

Cars No. 124, No. 125, No. 126 and No. 127 were four cars named respectively Pennsylvania, as given before, Ohio, Promontory and Wahsatch, all bearing the same dates, the same construction, the same assignment, and the same service, all beginning their service March 1, 1870, and all lasting after April, 1872.

Q. Are you able to tell the ages of those four cars, No. 124, No. 125, No. 126 and No. 127?

1369 A. I have a very distinct recollection that those cars were built the year previous and had a few months' service on the Union Pacific railroad, and were released from that service and brought on to the Fort Wayne road, which had built the cars, and given to them in order to give them Pullman equipment as quick as possible after the consummation of this lease.

Q. They were built then in 1869, is your memory?

A. Yes, sir, I think so. It must have been, because they would not have been taken out there with the lease approaching consummation.

Car No. 128, the Fort Wayne, was built by the Fort Wayne road

at their shops, and came out new on the 1st of August, 1870. It ran on the New York and Chicago line until after April, 1872.

Car No. 129, the Crestline, came out new on the 15th of August, 1870, and has exactly the same history, running until after April, 1872.

Car No. 132, the Cresson, built by the Pennsylvania Railroad Company, and assigned to the same. It came out new from the shops August 22, 1870, and ran until long after April, 1872.

Car No. 133, the Altoona, came out new on the 3d day of September, 1870, and has the same account. It was built by the Pennsylvania railroad at Altoona, and assigned to the same, running on the New York and St. Louis line until long after April, 1872.

Car No. 134, the Juniata, came out new on the 17th of September, 1870. It was built at Altoona, and used by the Pennsylvania road, and ran on the New York and St. Louis line until long after April, 1872.

1370 Car No. 135, the Tyrone, came out new October 22, 1870, and has the same history as the preceding number.

Car No. 136, the Mantua, came out new on the 9th of November, 1870, built the same place and ran through the same way long after 1872.

Car No. 137, the Vandalia, came out new on the 29th day of November, 1870, and ran until long after April, 1872.

Car No. 141, the Westfield, came new from the Detroit car works on the 20th day of October, 1870, and was assigned to the Allegheny Valley railroad, running until long after April, 1872.

Car No. 142, the Brocton, came out of the shops the 20th of October, 1870, belonging to the Allegheny Valley railroad, and was totally destroyed in a wreck on the 21st of December, 1871.

Car No. 143, the China, came new from the shops at Fond du Lac on the 14th of October, 1870. It was assigned to the Vandalia line and was running there long after April, 1872.

Car No. 144, the Japan, came from the Fond du Lac shops October 14, 1870, assigned to the Vandalia line, and was running long after April, 1872.

Car No. 145, the Ionia, built by Harlan & Hollingsworth, came new from the shops October 26, 1870. It went into service in the local runs of the Pennsylvania railroad here and continued after April, 1872.

1371 Car No. 146, named the Saranac, came out on the 25th day of October, one day sooner, and has in every respect exactly the same history, running long after April, 1872.

Car No. 151, the Wheeling, came new out of the shops on the 26th of September, 1870. It was built by Jackson & Sharp and went on the Baltimore & Ohio railroad, continuing in service until after April, 1872.

Car No. 152, the Baltimore, came out of the shops on the same date, from the same shops, and went onto the same line and continued in service until after April, 1872.

Car No. 153, the Grafton, was built by Jackson & Sharp. It came

new from the shops November 14, 1870, was assigned to the Baltimore & Ohio line and ran until after April, 1872.

Car No. 154, the Oakland, built by Jackson & Sharp, was assigned to the Baltimore & Ohio. It came new out of the shops November 15, 1870, and ran until after April, 1872.

Car No. 157, the Trenton, built by the P., W. & B. railroad, and assigned to the New York and Washington air line, came new from the shops December 5, 1870, and ran until long after April, 1872.

Car No. 158, the Canton, came new from the shops, December 14, 1870. It was built by the P., W. & B. road at Wilmington, and assigned to the New York and Washington air line, where it ran until after April, 1872.

Car No. 159 was new December 19, 1870, from the P., W. & B. shops at Wilmington, named the Chester, and ran until after April, 1872.

1372 Car No. 160, the Princeton, built by the P., W. & B. road at Wilmington, came out new the 20th of December, 1870, running long after April, 1872.

Q. Give a history of the car Persia, and its number.

A. The car Persia was a new car, put on the Toledo, Wabash and Western railroad on October 1, 1870, and was called car No. 163. It ran there until May, 1871, when it was removed from the division and another car, the Danville, was given No. 163. In a word the number was operated and succeeded by another car.

Q. How long did the Danville run?

A. The Danville ran until long after April, 1872.

Q. Give the history of the car Scotia, and its number.

A. The car Scotia in the same way was brought new onto the line October 1, 1870, and ran until May, 1871. The line was started October 1, 1870. The Persia ran on the 1st of October, 1870, and ran until the 17th day of May, 1871. The Scotia commenced running October 1, 1870, as No. 164, and ran until May, 1871. The day of the month is not given.

Q. Was that number taken up by another car?

A. Yes, sir. Perhaps it would make it clear to say there were six numbers assigned to the Wabash road when the lines were taken up, and the runs were started with outside cars, which took those numbers, and when the cars were taken away they left the numbers behind them to be used by the cars which succeeded them.

1373 Q. What is the next car which you find succeeding in that number?

A. No. 164. The car Rosedale.

Q. When did its service begin in the division?

A. December, 1871, apparently, and continued until after April, 1872.

Car No. 165, named the Toledo, was built by the T. W. & W. It came out of the Toledo, Wabash and Western shops new November 10, 1870, and continued in service until after April, 1872.

Car No. 166, the Wabash, came out on the 10th of November, 1870, and was in service long after April, 1872.

Q. You spoke of some cars that ran only a part of the time during the year 1870 as wild cars?

A. Yes, sir.

Q. What is meant by "wild" cars?

A. In the broad sense a wild car is one which is used on a road, and its maintenance is taken care of by the Pullman Company, for which it receives a compensation in the shape of a charge per mile operated by the car.

Q. And the term is used in contradistinction to the assigned cars, where cars are run on a road, which, instead of paying mileage, maintain outside repairs of cars?

A. Yes, sir.

Q. Please give the names and the beginning and ending of service of any wild cars in 1870 in the division of which you have any record, other than the Comet and Westerly, which have already been spoken of.

1374 A. The statement entered on page 37 of "Memoranda History of Cars" gives a record of all cars operated within the Central division or C. T. division in 1870, that were not assigned cars. It is as follows:

Car.	From and to—	Where run.
Indiana	Dec. 25 to Dec. 31, '70	Bet. Chicago & Cincinnati.
Riverside	October 2 to Nov. 2	I., B. & W.
Marquette	Oct. 2 to Oct. 30	"
Sarnia	Oct. 1 to Nov. 16	Toledo, Wabash & Western.
Huron	Oct. 1 to Nov. 19	"
Arlington	August 19 to Dec. 31	Vandalia line.
Southern 13	Sept. 27 to Dec. 6	Bet. Washington & Lynchburg.
Southern 14	Sept. 29 to Dec. 4	"
Sanderson 13	Sept. 13 to Dec. 15	Bet. St. Louis & Cincinnati.
Sanderson 11	Sept. 14 to Dec. 4	"
Wayne	July 17 to Aug. 27	New York & Chicago.
Dexter	July 17 to Aug. 27	"

Q. That is the record aside from the Comet and Westerly, which you previously had?

A. Yes, sir.

Q. Look at your special memorandum, and state what information you have respecting the old Central Transportation cars No. 77 and 78, which were not in the history you have already given.

A. Cars No. 77 and No. 78 were two compartment cars
1375 built by the Pittsburgh, Fort Wayne and Chicago railroad at Fort Wayne, and came out new on the 1st of February, 1868. No. 77 was designated probably at the shop as No. 102, and No. 78 as No. 101.

Q. The shop number of what company?

A. Of the Fort Wayne shops. That was probably a shop number. Anyway, they were designated No. 102 and No. 101, and their

numbers were changed on the 2d day of March, 1868, to No. 77 and No. 78.

Q. So those numbers in the accounts of Mr. Weckerly relating to cars No. 101 and No. 102, bought at that date from the Fort Wayne shops, relate to cars No. 77 and No. 78 of the Central Transportation numbers?

A. Unquestionably.

Q. In Mr. Weckerly's testimony there is a reference made to certain expenses and charges relating to cars and numbers, which he gives as No. 1032 and No. 1033. Do you know what cars those were?

A. Yes, sir. No. 1031 and No 1032 were two ordinary railroad passenger cars furnished by the Philadelphia and Erie railroad for the treatment they received, which was the placing of four or six sections of sleeping car in one end of them, the balance being used as a sit-up car, an ordinary passenger car, so they could have a limited but sufficient amount of sleeping-car service on some poor trains that they had up in the west end of the Philadelphia and Erie railroad. The cars were owned by the railroad, and maintained by the railroad, and when the service required a little better
1376 accommodation the railroad resumed possession of them, the sleeping car company having simply put some old berths and seats in them to make them a temporary expedient for the accommodation of travel there.

Q. They were not cars then that came to the Pullman Company from the Central Transportation Company?

A. No, sir; in no ways whatever. I have a note against car No. 1032 saying it was returned to the railroad company on the 30th day of September, 1869.

Q. What is a sleeping-car line?

A. A sleeping-car line is the designation given to the route over which cars pass in the performance of their service, and the earnings of which are consolidated as that of such a line. It is a designation made for the facility of handling equipments.

Q. Do all the sleeping cars running over the Pennsylvania road, for instance, at the time we are dealing with, running between New York and Cincinnati, say, constitute one line?

A. No, sir. Cars of the same line, unless it is some very exceptional circumstance, are the cars which run on the same schedule of the road. For instance, there was a morning and evening line to Cincinnati, and those would bear different numbers.

Q. Different line numbers?

A. Different line numbers, yes.

Q. Were there not sleeping-car lines operated in the Central division or the Central Transportation division, as it was
1377 called at first, in the year 1870 and the year 1871 and the first three months of 1872, which were operated wholly or in part on lines of railway which were not included in contracts of the Central Transportation Company assigned to the Pullman Company?

A. Yes, sir, there were such lines.

Q. Can you give those lines?

A. I have here a printed statement of the arrangements of lines in the Central division, commencing with January 1, 1871. Now for 1870 there is no such printed statement, and I can only speak inferentially by saying that among those lists of wild and borrowed cars I find here that I reported borrowed cars as operated within the division which were running on lines, as follows: The Indianapolis, Bloomington & Western railroad, which was not a C. T. line road; the Toledo, Wabash & Western railroad, which was not a C. T. road. There was run a line between Washington and Lynchburgh about which I am unable to state definitely, as that matter would have to be settled by reference to things which do not come within my province to comprehend. That is to say, in running from Washington to Lynchburg, over what was then known as the Virginia Midland road, the road had not been within the division—the Baltimore and Ohio people had some interest in it by which these arrangements were carried out—and whether it is a line within the intention of the question I cannot tell.

Q. What was the length roughly of the I., B. & W. line, if you know?

A. A couple of hundred miles, probably; I can't tell.

1378 Q. What was the Wabash line?

A. The Wabash line is about 500 miles long. The Wabash line was a joint line in part. That is to say, they ran cars all night. From their starting place at St. Louis *at* Wabash was all on the road, and then sometimes they would run to points beyond the Wabash road by running them to New York city. In that case, we made a joint line with the Gates Company, which operated the Michigan Southern and Lake Shore road, and the Wagner Company, which operated the New York Central, and each company put in its proportion of cars, kept the line full, and there was something about the earnings of them, but I don't know that. I find in looking through my schedule here one-third Gates, and the proportions on which that business should be divided.

Q. The Wabash territory was from St. Louis to Toledo, was it not?

A. Yes, sir.

Q. And that for the time for which such line ran made a through line from St. Louis to New York, as I understand?

A. Yes, sir; it was a part of a through line, in which the sleeping-car companies controlling the different sections of it contributed jointly a *pro rata* and made a through line of it.

Q. But that part operated by the Pullman Company was not operated under any contract previously owned by the Central Transportation Company?

A. No, sir.

Q. You have given all of the year 1870?

1379 A. Yes, sir.

Q. Was there not a line on the Allegheny Valley railroad in 1870?

A. Whenever the Allegheny Valley came into existence. The

contract for operating cars on the Allegheny Valley railroad was made by the Pullman Company subsequent to its lease of the Central Transportation property.

Q. What I want to know is, whether or not your record shows any service on the Allegheny Valley railroad in 1870?

A. I will look and see. Those were operated, not by wild cars but by assigned cars, and therefore not in that list that I read from before. Cars No. 141 and No. 142, as recited in their history, came from the shops of the Detroit car works on the 20th of October, 1870, and were put in service on the Allegheny Valley railroad, and I presume from that date the Allegheny Valley line started.

Q. And ran between what points?

A. It ran sometimes to Corry, sometimes to Titusville, and sometimes to Brocton.

Q. From where?

A. From Pittsburgh; and in late years clear through to Buffalo.

Q. What was the approximate length of that line?

A. One hundred and fifty miles. It was a slow night train.

Q. See whether there are any other lines than those you have mentioned?

A. The Toledo, Wabash & Western commenced on the 1st
1380 of October, apparently, the operation of the division. I am a little embarrassed for the want of records to hunt up. The C. T. lease brought into the service the Bellefonte railroad, a line 200 miles long, more or less, between Indianapolis and Crestline; and at some time in those days there was a joint line service put on with the Sanderson cars over the Indianapolis & St. Louis railroad, but I suppose by digging among the musty boxes of records put away I could in time give it. Up until April, 1872, there ran through continuously the service on the Toledo, Wabash & Western railroad, from St. Louis to and from different points, up to Toledo, and various local and through lines. The Allegheny Valley line ran continuously from that time on. If the New York & Lynchburg line is a line out of the C. T. lines, that was on early in 1871.

Q. That is to say, you only refer to it as a point beyond Washington?

A. Yes, sir; but I say there was a line designated as the New York & Lynchburg line, that came in also. That was all right. I doubt if there are any other lines.

Q. Did the St. Louis and New York line, by way of the Wabash, run clear through this period?

A. I think it did; yes, sir. I believe it is in the first of the schedules, and I think it is in the last of them. There is a remark here, Toledo, Wabash & Western railroad, between New York and St. Louis, and between St. Louis and Cleveland; they sometimes ran up their local lines and around to meet the uses of the railroad, and from and after the date of the purchase of the Sanderson, the
1381 cars, the service over the Indianapolis & St. Louis road was a service more or less according to connections independent of the Central Transportation lease.

Q. By another line of railroad?

A. Yes, sir. Sometimes they used the Central Transportation line, like the Hamilton & Dayton, to get into Cincinnati, and perhaps always used some one of them; but there was various swapping around, and a statement from the cashier's books where the thing was coming would be the only thing to call attention to it.

Q. State what book it is that I now present to you?

A. This is a record which was kept in the office of the general superintendent of the Pullman Palace Car Company in the early years of this lease, in which are entered the data connected with the division, of the disposition of the old cars which were condemned, broken up, or otherwise destroyed.

Q. It contains the history of all the Pullman cars up to the date to which it runs?

A. So far as those other dates are concerned all the cars are entered in such a way that I presume it was intended to be, and probably is, a history of all the cars.

Q. Can you tell from the entries in that book the date of condemnation of the following cars of the Central Transportation Company? Give the date of the condemnation of No. 26.

A. No. 26 was assigned to the Baltimore & Ohio railroad, and condemned January, 1871.

1382 No. 28 was assigned to the Baltimore & Ohio railroad and condemned at Mount Clare December 28, 1870.

No. 31 was assigned to the Baltimore & Ohio railroad and condemned in February, 1871.

No. 43 was condemned and sold to the Indianapolis, Cincinnati & Louisville railroad, M. E. Ingalls, receiver. It was side-tracked and condemned in August, 1871.

No. 44 was side-tracked and condemned in August, 1871. Both of these cars were assigned cars to the I., C. & L.

No. 60 was assigned to the Philadelphia & Erie railroad, and condemned March, 1871.

No. 116 was assigned to the Baltimore and Ohio railroad, and condemned December 1, 1870. It was sold to and settled with the Baltimore and Ohio railroad for $1,000 January 4, or 13, 1873.

Subject to Mr. Prichard wishing to have the authenticity of the book from which Mr. Lincoln is questioning the witness, called "Construction of Cars of the Pullman Palace Car Company," established, he now asks the witness to examine and give the dates of building of the following-named cars:

Q. Give the date of building car No. 129, the Crestline?

A. The car Crestline, as No. 129, came out new, August 15, 1870.

The car Persia came out September 12, 1870.

The car Scotia came out September 20, 1870.

The car Danville came out May 9, 1871.

The car Rosedale came out December 8, 1871.

1383 The car Plymouth, No. 130, came out January 5, 1871.

The car Westerly, No. 147, came out October, 1870. There is no date given closer than that.

The car Tolono, No. 168, came out February 16, 1871.

The car Paris, No. 187, and the Berlin, both came out February 23, 1871.

The car Kensington, No. 161, and the Wilmington, No. 162, both came out February 9, 1871.

The car Planet, No. 256, came out December 14, 1871.

The car Central, No. 202, came out March 5, 1871, and the Western April 5, 1871.

The car Kearsarge, No. 206, came out September 16, 1871.

Q. See if you find in the general superintendent's car record the dates of construction of the following cars. If so, give the date of the construction of the Wayne.

A. There is a Wayne there of the Kansas Pacific railroad. If that is the car it was built by Barney, Smith & Co., of Dayton, in 1870.

The Dexter was built by Barney, Smith & Co. at Dayton in 1870.

The Arlington was built at Aurora by the C., B. & Q. railroad, and commenced service March 19, 1870.

The Sarnia was built by Barney, Smith & Co. at Dayton in 1870.

1384 The Huron was built by Barney, Smith & Co. of Dayton in 1870.

The Indiana was built by Eaton, Gilbert & Co. in 1867.

The Marquette was built by the Hannibal and St. Joe railroad in 1870.

Cross-examined by Mr. PRICHARD:

Q. You have spoken of certain lines which in 1870 and later years were included in the Central Transportation division, afterwards called the Central division, but which were not operated under Central Transportation Company contracts. Were those lines operated by the Pullman Company prior to the Central Transportation Company lease, or were those lines which were commenced after the Pullman Company acquired the Central Transportation Company's property?

A. Take the Allegheny Valley railroad, for instance, no sleeping cars had been run on the Allegheny Valley railroad previous to this period in 1870, when the line was started, and in providing for which line the Pullman Company made a contract with Mr. Lawrence, the general superintendent of the road.

Q. May I assume that lines like the Allegheny Valley line naturally belonged to the system which was acquired by the purchase of the Central Transportation Company's cars?

A. It was wholly within territory of and developed by Central Transportation lines.

Q. While you were superintendent of the Central Trans-
1385 portation division of the Pullman Company was there a book or books kept containing a record of the net and gross earnings of that division and of the gross and net earnings per car?

A. That matter did not come within my province of knowing because it was in the accountant's office at Chicago.

Q. Can you tell from the books before you the average number of cars that were required to operate the Central Transportation division or the Central division during the years you were superintendent; I do not mean by this question the total number of cars employed, because that would include wild cars and cars that were destroyed and others substituted, but I mean the average number of cars that were in actual use?

A. I might possibly compile an accurate guess on a thing of that kind by devoting some time to it and recalling circumstances. There is nothing here that will enable me to do that. I doubt if that could be given a satisfactory answer to, at least, without a great deal of trouble. We know certainly where a line, of course, is run locally between two cities the car leaves each terminus at night and it takes two cars to fill that road, and by summing up the number of those lines in making a proper proportion for shopping margin you could cover it with an estimate that anybody could do; he would take this schedule of lines and work on it. As regards the through lines a rough approximation might be the same way.

Q. There is nothing on the books before you which will enable you to state that now?

1386 A. No; it would be a matter of considerable time to take it up and make an estimate of that kind.

Q. In the schedule of lines that you have before you for 1871 and subsequent years, I notice some of the lines are stated to be lines of silver palace cars, some of the lines are stated to be lines of Pullman cars, some of them lines of both Pullman and silver palace cars and some of them lines of palace cars without designating either Pullman or silver palace. Do the silver palace cars mean necessarily Central Transportation Company cars?

A. The silver palace car was a designation given to the higher-grade cars of the Central Transportation Company, and at the time the lease was made there were a few cars in construction at Fort Wayne, Pittsburgh and Philadelphia, which were of the silver palace design, which came out, however, paid for and carried as Pullman cars, being numbered up above 119. So they were distinctly being taken as really Pullman cars, and in the language of this lease all silver palace cars were Central Transportation cars, and all Pullman cars were either cars put on by the Pullman Company or cars which had been remodeled into the Pullman style. The purpose of that language was to furnish information to the railroad companies, and they in their advertisements to the public set forth that: "We run a line of open Pullman cars," "We run a line of silver palace cars," or "We run a line" of such and such cars "between certain places," and that is still kept up in the railroad advertising.

(Signature waived.)

(Adjourned.)

1387 *Appendix to Testimony of Dolphus Torrey.*

History of Central Transportation Company cars Nos. 1 to 119.

All taken from book called "Pullman Palace Car Company, Central Division, Description of Cars," excepting that of car No. 44, which is taken from "Memoranda History of Cars," by Captain Torrey.

Car 1.

This car was originally built by Murphy & Allison, Phila., delivered M'ch 3rd, 1859, as A. Was rebuilt from the floor up at Altoona shops, Pa. R. R. and came out Sept. '68, a silver palace named Cresson, and ran in Chicago through lines until Aug. 21st, 1870, when it was shopped at West Phila. shops, Pa. R. R. for painting, reupholstering &c., coming out no name Sept. 19th and going into the N. Y. & St. Louis line by the way of Crestline, and when that was discontinued, in the local lines on Pa. R. R., where it remained till July, 1873, when it was chartered to Haighth & Co.'s circus till Oct. 24th, 1873.

Lay at Phila. until April 20, 1874, when it was condemned and settled for $7,000.

Car 2.

1388 This car was built in West Phila. shops of Pa. R. R., delivered in the fall of 1866, was shopped at West Phila. 1868, and remodeled into silver palace car, coming out named Hiawatha, M'ch 4th, 1869, and running in the N. Y. and Cincin. lines. In Pittsburgh shop, Pa. R. R., Oct. 1st to 19th, 1870, for painting and minor alteration. Came out no name, and run bet. Altoona & J. City.

Was transf'd to Chicago div. June 13th, 1871.

Received back May 5th, 1872, and run on the Pa. R. R. lines until Nov. 13th, 1872, when it was condemned.

Car 3.

This car was built by Bolton, Dykeman & Co., Phila.; delivered Apr. 15th, 1864, named Jersey City, and run on the N. Y. and Wash'n line. Transf'd to Pa. and Phila. & Erie R. R. in 1869. Run on local lines of the two roads, and condemned and cut up when shopped at Renovo, in M'ch, 1870. Car built to replace it. No. 186, named Renova.

Car 4.

This car was built at Altoona by Pa. R. R., delivered about the 1st of Jan'y, 1866, and went into local lines bet. Philadelphia and Phila. and New York. Sent to West Phila. shops in Nov., 1868, and came out as the "May Flower," a silver palace car Feb'y 1st, 1869, and ran in the Chicago and N. Y. lines, and sometimes in local Pa. R. R. lines. Shopped at Pittsburgh, Pa. R. R. shops Oct., 1870, coming out Nov. 18th, painted and minor alterations, and running in Altoona and Jersey City lines, no name.

Was burued at Lockport, Pa. R. R., Feb'y 23rd, 1871. Settled for.

1389 Car 5.

This car was built by Easton, Gilbert & Co., Troy, N. Y. Delivered Nov. 26th, 1858, and run on the P., Ft. W. & C. R. R. Remodeled at Allegheny shops of that Co., and came out a silver palace, named "Pittsburgh," April, 1866, and ran in Chicago and N. Y. lines, until Mch. 21st, 1871, when it was condemned at Allegheny, and replaced by car 261 in Sept., 1872.

Car 6.

This car was built by Easton, Gilbert & Co., Troy, N. Y. Delivered Nov. 26th, 1858, and ran on P., Ft. W. & C. R. R. Remodeled at Allegheny shops of that Co., coming out in 1868, named "Allegheny," and running in the N. Y. and Chicago lines. Condemned in Oct., 1870, and sent to Allegheny yards. Was replaced by car No. 262 in Sept., 1872.

Stored at Pullman, as per letter E. H. G., 8–24–85.

Transfd. Chgo. div. 12–31–86. See letter of T. H. W., 12–30–86.

Car 7.

This car was built at Altoona, Pa., R. R. shops. Delivered M'ch 1st, 1866, and ran on the Pa. R. R. on local lines, named "City of Lancaster." Condemned and ordered cut up Dec. 2nd, 1870, at Altoona. Jonah Woodruff states that this car was the successor in direct line, by rebuilding, of the original car built under the Woodruff patent.

1390 Car 8.

This car was built by Barney, Parker & Co., Dayton, O. Delivered Feb'y 10th, 1859, for Alfred Garther and others. Run on the Steubenville R. R. Remodeled by Jackson & Sharpe, Wilmington, Del., coming out Ap'l 8th, 1869, named Muskingum, and run bet. Pittsburgh and Cincinnati.

Condemned at Pittsburgh, Feb'y 1st, 1873. Replaced by car 269.

Car 9.

This car was built by Bolton, Dykeman & Co., Phila. Delivered Ap'l 15th, 1864. Named "City of Newark," and ran in the N. Y. and Wash'n line until M'ch, 1869, when it was run on other lines until July, 1869, when it was placed on the Chicago and Columbus line. It lay idle from M'ch to Oct., 1870, when it was overhauled in the shops, Columbus, Chicago and Indiana Central div. P., C. & St. L. R. R., coming out in Nov. Was condemned at Columbus shops M'ch 26th, 1872, and settled for Oct. 16th, 1875, $7,000.

Stored at Pullman as per letter E. H. G., 8–24–85.

Transfd. Chgo. div., 12–31–86, see letter of Gen. Supt. T. H. W., 12–30–86.

Car 10.

This car was built at West Phila. shops, Pa. R. R. Delivered Sept. 1st, 1865, named "Quaker City," and run on the Pa. R. R. local lines until condemned to be cut up in Altoona yard Oct. 25, 1870. Settled for.

1391 Car 11.

This car was built by Kimball & Gordon, Phila. Delivered as car "K" Jan'y 27th, 1862, and run on the P., Ft. W. & C. R. R. It was shopped Feb'y 2nd, 1869, at Allegheny shops for remodeling, and came out named "Pilgrim" a 10-sec. silver palace car, June 5th, 1869, and run on the P., Ft. W. & C. R. R. until June 16th, '71, when it was transf'd to the Chicago div. Received back Oct. 1st, 1872, and was condemned at Ft. Wayne Jan'y 20th, 1873.

Car 12.

This car was built by Kimball & Gordon, Phila., and delivered as car "L" January 24th, 1862, and run on the P., Ft. W. & C. R. R. It was shopped M'ch 1st, 1869, at Allegheny shops for remodeling, and came out a 10-sec. silver palace car, July 22nd, 1869, and run over P., Ft. W. & C. R. R. until June 16th, 1871, when it was transf'd to the Chicago div. Received back Oct. 1st, 1872, and condemned at Ft. Wayne Jan'y 20th, 1873.

Car 13.

This car was built by J. R. Bolton, Phila., and delivered as car "M" Nov. 17th, 1862, and run on the Bellefontaine R. R. 1867 or 1868; the car was in shop in Indianapolis for remodeling, putting in iron columns, double upper berths, etc., with black-walnut finish. Came out named "Prairie City." The car was loaned to the I. C. & L. R. R. in Sept., 1869, and returned in Feb'y, 1870.

See car Leavenworth.

Last service April, 1881.

1392 Car 14.

Built by J. R. Bolton, Phila., and delivered as car N., Nov. 17th, 1862, and run on Bellefontaine R. R. Was in shop at Indianapolis, 1867 or 1868 for the same treatment as car 13. Came out named Bellefontaine, and run on the same road as before, until July, 1870, when operations were discontinued.

Fixed up & went to Eastern div.; now lying at Lindensville, Mass. So informed by E. H. G. 6 | 25 | 86.

Last service Jan., 1885. See letter of E. H. G. 6 | 26 | 86.

Car 15.

This car was built by J. R. Bolton, Phila., and delivered as car O Dec. 20th, 1862, and run on the Northern Central. Shopped at York, Pa., 1870, Ap'l 28th, for remodeling. Came out a 10-sec. silver palace car, June 30, 1870, running on the Balto. & Elmira

line. Continued running on N. C. R. R. lines until Dec. 5th, 1872, when it was wrecked on Pa. R. R., near Mifflin Sta., when it was taken to Altoona and lay in yard until July, 1873, when it was condemned and settled for.

Replaced by car 315.

Car 16.

This car was built by J. R. Bolton, Phila., and delivered as car P. Dec. 20, 1862, and run on the Northern Central R. R. Was shopped at York, Pa., Jan'y 1st, and came out Ap'l 28th, 1870, a 10-
1393 sec. silver palace car, running in the Balto. and Elmira line, and continued in the N. C. R. R. lines until Nov., 1873. It lay at Altoona until Aug. 17th, 1874, when it was condemned and settled for.

Car 17.

This car was built by J. R. Bolton, Phila., and delivered as car "Q," Mch. 7th, 1863, and run on Pa. R. R. This car was broken up in Pa. yard, Altoona, Pa., Sept. 17th, 1869. Value of car cr. P. P. Car Co. on a | c in settlement made at Altoona, Dec., 1870.

Car 18.

This car was built by J. R. Bolton, Phila., and delivered as car "R," Mch. 17th, 1863, and run on Pa. R. R. In Apl., 1867, this car came from Pgh. shops with iron columns and double upper berths, being the first car so treated, and a pattern for others following. Named "Iron City." It was afterwards run on Pa. R. R. and in Cincinnati through line. It was cut up in Altoona yards Oct. 18th, 1870.

Car 19.

The original car was broken up in the Phila. yard May 11th, 1869, and the present car built at Altoona after plans prepared under supervision of A. J. Cassatt, supt. of M. P. Pa. R. R. Came from shop June 16, 1870, and has since run in the N. York and Cincinnati lines. Was shopped at Altoona Jan. 1st to 14th, 1871, for
1394 varnish, and was burned near Mansfield, P. C. & St. L. R. R., Feb'y 28th, 1871. Settled for.

Car 20.

This car was built by J. R. Bolton, Phila. and delivered as car "T," Aug. 1st, 1863, and run on Pa. R. R. Shopped at Pgh. Dec. 22d, 1868, and came out May 1st, 1869, a 10-sec. silver palace named "Gem." Run in through lines N. Y., L'ville, Cinti., &c., and local lines Pa. R. R. until May 8th, 1872, when it was condemned and settled for.

Car 21.

Built by J. R. Bolton, Phila., and delivered as car "U" Sept. 12th, 1863, when remodeled with wide berths, iron columns, &c., probably in 1867.

It was named "Du Quesne." Always run in Pa. R. R. lines, and was cut up in Altoona yard 1870.

Car 22.

Built (to replace old No. burnt) by Pa. R. R. at Altoona, and came out the "Mountain City" in July, 1868, a vestibule sleeping car. Shopped at West Phila. Oct. 10th, 1870, for remodeling.

Out in Mch. 6th, 1871, a vestibuled car with berths, &c., in the Pullman style.

Commenced running in the local lines on the Penn. R. R., where it remained until July, 1873, when it ran on the Allegheny Valley R. R. until July 31st, 1873, when it was wrecked on the A.
1395 V. R. R. It lay at Allegheny Valley R. R. yards (Pgh.) until Jan'y 11th, 1874, when it was shopped at the shops of this company at Pgh. until June 3rd, 1874, to receive gen'l reprs., since which time it has been running extra on Penn. R. R. lines. Condemned and stored Altoona, D. N. W., 5–8–79.

Car 23.

Built by the P., Ft. W. & C. R. R. at Allegheny to replace old car cut up in div. 1868. Delivered Sept. 6th, 1870; a circular end silver palace car named "Abbetsford," and run in the New York and Chicago through line. Was shopped at Allegheny M'ch 6th, 1871, to Ap'l 2nd. Shopped Allegheny Nov. 18th, 1871, to Jan'y 6th, 1872. Shopped Allegheny Aug. 10 to Sept. 14th, 1872, each time for varnish. Was shopped at Allegheny Aug. 18th to Oct. 9th, 1873, for gen'l repair, and at Ft. Wayne Ap'l 13th to July 31st, 1874, minor repairs, on ac. of accident at Wanatah, P., F. W. & C. R. R., and at Allegheny Nov. 12, 1875, for gen'l repairs, out March 30, 1876, 9– at A. Y., 3 | 9 to 3 | 30, 1877 for 27.

Transf'd to mlge. basis May 1st, 1882. Stored Altoona Oct., 1882. Used on a trip to San Francisco, K. Templars, Aug. 1883. Stored 9–1883.

Car 24.

Built by Bolton, Dykeman & Co., Phila., as car "X." Delivered June, 1864, and run on the P., F. W. & C. R. R. Shopped at Allegheny M'ch 23d, 1870, and cut up in May, 1871, and settled for.

1396 Car 25.

Built by Bolton, D. & Co., Phila., as car "Y." Delivered August 20th, 1864, and run on the Pa. R. R. Shopped at W. Phila., and came out Ap'l 1st, 1869. Named Lackawanna, a silver palace car, and shopped at Pgh. Nov. 18th to Dec. 23rd for painting, &c. No name. Burned near Mansfield, P., C. & St. L. R. R. Feb'y 28th, 1871. Settled for.

Car 26.

This car was built by Bolton, Dykeman & Co., as car "Z," and delivered August 20, 1864, running on Pa. R. R. until May, 1867,

when it was transferred to the B. & O. R. R., where it has since remained, old and worthless.

Car 27.

Built by Barney, Parker & Co., Dayton, Ohio, for Alfred Gaither. Run on the Steubenville R. R. It was rebuilt nearly all (and possibly the whole car) at Steubenville and came out in Ap'l, 1868. Named "Steubenville," a silver palace (less the silver and the palace), and run between Pgh. and Cincinnati, until Jan'y 22, 1873, when it was condemned. Dismantled and turned over to P., C. & St. L. R. R. Co. Replaced by car No. 268.

1397 Car 28.

This car was built by Murphy & Allison, Phila., for C. E. Knight in 1861, "No. 3," and ran on the B. & O. R. R. Remodeled at Wilmington (Jackson & Sharpe) in 1868, and returned to the B. & O. R. R. as worthless old car.

Car 29.

This car was built by Bolton, D. & Co., Phila., and delivered Sept. 25, 1865. It run on the Phila., Erie and Penna. R. R. until June, 1867, when it was remodeled at West Phila., and sent to the Bellefontaine R. R. in Nov. of that year, to which road it has since been assigned. It was loaned to the Louisville, Cin'ti & Lexington R. R. (with No. 13) in Sept. 1869, and was returned in Feb'y, 1870.

It had been idle until January, 1871, when it was condemned and taken to Wilmington. Dropped by order E. H. G., 8–24–85.

Car 30.

This car was built by Pa. R. R. at Altoona to replace car burnt, and delivered in May, 1868. It had previously been a directors' car, and after several changes and trials was turned into a sleeper with iron columns, vestibule, &c., named "Harrisburgh." It ran in through lines to Cincinnati and Chicago until Aug. 18th, 1870, when shopped at West Phila. and remodeled to an open Pullman
1398 palace car, coming out Dec. 31st, 1870, and assigned to Phila. and P'gh lines, where it remained until Dec., 1873, when it was loaned to Louisville, Cint. & Lex. R. R. to run bet. Cinti. & L'ville, where it remained until Dec. 10th, 1874, when it was returned and since run on Pa. local lines. 9 Aa 2 5 | 19 for 28 | 1876. Interior partly burned at W. Phila. 12 | 15 | 76. Sent to Altoona Jan., '77. See D. N. W. 10 | 25 | 78.

Car 31.

This car was built as car 10 for E. C. Knight by Murphy & Allison, running on the B. & O. R. R. since 1866. Was overhauled (remodeled) by Jackson & Sharpe, and returned June 21st, 1869, named the "West Virginia" old and worthless.

Car 32.

This car built to replace old car burnt by N. C. R. R. at York on coming out in Sept., 1868, name "City of York," and running on the Northern Central R. R. Shopped at York for remodeling July 27, 1870, to be a silver palace, in the style of 15 and 16. Came out remodeled into an open Pullman car January 9, 1871. Shopped at York June 15 to 27, 1871, for air brakes. Again July 1, to 18, 1871, for varnish, etc. Was totally destroyed by fire near Lock Haven, P. & E. R. R., January 29, 1872.

Car 33.

1399 This car was built as car 5 for E. C. Knight by Murphy & Allison. Sold to P., W. & B. R. R. Co. Purchased by the C. T. Co. May 1, 1864. Went on the B. & O. R. R. in 1865, where it has since remained. It is named "City of Cumberland." Old and worthless. Condemned in January, 1871.

Car 34.

Built by Bolton, D. & Co., and delivered October 20, 1864. Run on the Pa. R. R., etc. Was remodeled at W. Phila. Coming out March 18, 1870, as a silver palace car, of which it is the poorest specimen. Has run in through and local Penna. lines until December, 1871, when it was condemned and settled for.

Car 35.

This car was built by Bolton, D. & Co., and delivered October 20, 1864, and run in the N. Y. and Washn. lines. It was overhauled in fall of 1866, but is a very poor old car. It was re-upholstered and repaired in March and April, 1870, at Wilmington. It lay as an extra at Washington (December, 1870). Condemned April, 1871, and is now lying at Wilmington.
Taken to Altoona August 31, 1879, and stored.

Car 36.

This car was built by O. & M. R. R. and sold to C. T. Co., an old car. It was rebuilt in whole or in part at Cochran shops, in
1400 1868, and made a silver palace car, "Queen City." It was shopped at Cochran Feb'y 5th to Apr. 14th, 1871, for painting, etc. Was again shopped at E. St. Louis. Jan'y 27th to Feb'y 20th, 1872, for varnish, etc. Was shopped at Cochran, Aug. 1st to Nov. 9th, 1872, for varnish, etc. Was shopped at Cochran Sept. 10th to 20th, 1873, for varnish and Baker heater. It lay idle at E. St. Louis during March, 1874. Was shopped at Cochran Ap'l 22d to May 23d, and Sept. 15th, Nov. 28th, 1874; both times for varnish, etc. Has always run on O. & M. R. R. lines, 9 at Cn. 10–30 to 11–16–75 for 27. Settled for May 8, 1882. See letter of gen'l sup't, 3–11–84.

Car 37.

This car was built by O. & M. R. R., 1864.

Purchased Oct. 1st, 1864. Was shopped at Cochran Dec. 21st, 1869, for remodeling. Came out a 10-sec. silver palace car May 16th, 1870. Was shopped, Cochran, Jan'y 14th to Feb. 3d, 1871, for varnish, etc., and at E. St. Louis Feb'y 21st to M'ch 7th, 1872. At Cochran, again M'ch 22d to July 17, 1873, gen'l rep'rs, and at St. Louis, Dec. 12th, 1873, to Jan'y 10th, 1874, berths and Baker heater. Was shopped again at Cochran Aug. 10th, Sept. 14th, minor repairs. Again at Cochran Nov. 23d to 28th, roof and minor repairs. Wrecked near Hadley Sta. on O. & M. R. R., Feb'y 16th, 1875. It was afterwards decided by Mr. Chrystie, vice-president, O. & M., that it would not pay to replace car on track, after removing every-
1401 thing of value. He had the car burned Feb'y 18th, 1875. Settled for May 8th, 1882. See letter gen'l sup't, 4–1–84.

Car 38.

This car was built by Pa. R. R., Altoona, coming out in June, 1868, named, "Conemaugh," a silver palace car, and run in the through lines to Chicago until Mch. 10th, 1870, when it was run on the A. V. R. R. Returned in Oct., 1870, and shopped at West Phila. Dec. 30, 1870, to be remodeled into an open Pullman car. Came out June 1st and commenced running on the N. Y. and Louisville line. Was shopped at Jersey City Mch. 25th, Apl. 11th, 1872, for varnish, &c. At West Phila. Jany. 14th, 29th, 1873, for varnish and replating silver. At Phila. Aug. 5th to Nov. 5th, 1873, for painting, varnish, replating silver and gen'l repair. It run in the Phila. & Pgh. line Feby., 1874, until July, 1874, from which time it has been running as extra from Phila. and Pittsburgh. Sent to Altoona Oct., '77, to be condemned. See D. N. W., 10–25–78.

Car 39.

This car was built by C. H. & D. R. R. Co. at Cint. Purchased Oct. 1st, 1864. The records of its running begin in June, 1866. From June, '66, to August, 1872, it was running bet. Cincinnati, Toledo and Detroit. It lay in C. H. & D. R. R. yard at Cinti. until March, 1874, when it was transfd. to construction dept., for remodeling. Rec'd from construction dept. June 9th, 1874.
1402 Remodeled into a fixed-berth car, from June 20th, 1874, it has run on the Balto. & Potomac R. R., 9 at Mt. Vernon 4 | 3 to 4 | 17 for 27—1875. 9 at Mt. V. 7 | 29 to 11 | 18, 1876 for 28.

Car 40.

This car was built by the C. H. & D. R. R. at Cinti. June, 1866, and run bet. Cinti. and Toledo or Detroit until Aug. 1872, when it was shopped at Ch. & D. R. R. shops, Cinti. Out June 9th, 1873. From June 9th to Mch. 1874, it run bet. Cinti. and Toledo or Detroit, when it was transfd. to constn. dept. Mch. 13th, for remodeling. Rec'd from constr. dept. June 9th, 1874, remodeled into a fixed-

berth car, from June 22nd, 1874, it has run on the Balto. & Potomac R. R., 9 at Mt. V. 4 | 19 to 5 | 12, 1875 for 27. 9 at Mt. V. 4 | 14 to 7 | 27, 1876 for 28.

Car 41.

This car was built by Bolton, D. & Co. Delivered Nov. 23rd, 1864. Run on the Pa. R. R. lines and broken up in the yard at Altoona Dec. 21st, 1869. Value of car Cr. P. P. Car Co. on in ac. settlement made in Dec. 1870, at Altoona.

Car 42.

This car was built by Bolton, Dykeman & Co. Delivered Nov. 20th, 1864, and assigned to N. Y. and Washn. lines, named "City of Washington." Side-tracked Dec. 1870, as worn out at Phila.
1403 Condemned and now lying at Wilmington, Del. Taken to Altoona Aug. 31st, 1879, and stored.

Car 43.

This car was built by Bolton, Dykeman & Co. Delivered Dec. 25th, 1865, and assigned to the Ind. and Cin'ti R. R. Shopped in May, 1867, and remodeled, coming out in Ap'l, 1868, named the "South Side." The car was shopped at Cin'ti May 27th, 1870, for remodeling. It was repainted and has since been waiting.

Car 44.

(From Capt. Torrey's History.)

Built by Bolton, Dykeman & Co. Delivered December 25th, 1864, and assigned Ind., Cin. R. R.
Remodeled in July, 1868, and shopped for it again M'ch 6th, 1870, under the same circumstances as No. 43.

Car 45.

Built by Bolton, Dykeman & Co. Delivered Feb'y 9th, 1865, and assigned Central Ohio R. R. In shop at Zanesville from M'ch to Oct., 1868, for remodeling. A very poor car. Burned inside Jan'y 6th, 1871. Condemned and dropped in April, 1871.

Car 46.

1404 This car was built by Bolton, D. & Co. Delivered Feb'y 9th, 1865, and assigned to Central Ohio R. R. Shopped at Zanesville from Oct., 1868, to M'ch 1st, 1869, for remodeling. Named "City of Zanesville." A very poor car. Shopped at Zanesville Nov. 19th, 1870, to Feb'y 28th, 1871, for varnish, roofing and minor repairs. Condemned Sept. 15th, 1871.

Car 47.

This car was built by Bolton, Dykeman & Co. Delivered Feb'y 27th, 1865, and run on the Pa. R. R. It has been named "Keystone State." Last running bet. Phila. and Renovo. Condemned and settled for in M'ch, 1871.

Car 48.

This car was built by Bolton, D. & Co. Delivered Feb'y 27th, '65, and run on the Penna. R. R. Shopped Sept. 1st, 1868, at West Phila. for remodeling. Came out Dec. 15th with iron columns, &c., named "Wyoming." Run between Phila. and Renovo until M'ch, 1871, when it was condemned and settled for.

Car 49.

Built by Bolton, Dykeman & Co. Delivered M'ch 29, 1865, and run on Penna. R. R. In shop from Apl. to Aug., 1868, for remodeling. Came out the "Wissahickon" and run bet. W'msport & Oil City until Feb. 23rd, 1871, when it was wrecked on P. & E.
1405 R. R. Condemned in Apl., 1871. Settled for June 29, 1874.

Car 50.

Built by Bolton, D. & Co. Delivered Mch. 29th, '65, and run on the Penna. R. R. Shopped for remodeling Aug. to Nov., 1868. Came out the "Delaware" and run on the P. & E. R. R. bet. W'msport and Oil City until Apl., 1871, when it was condemned and settled for.

Car 51.

Built by Bolton, Dykeman & Co. Delivered Apl. 4th, 1865, and run on the P., Ft. W. & C. R. R. Was shopped for 3 months in the latter part of 1867, probably for remodeling. Named "Crestline." Was condemned in Apl., 1871, and replaced by the present car 264.

Car 52.

Built by Bolton, D. & Co. Delivered Apl. 4th, 1865, and run on P., Ft. W. & C. R. R. Burned in 1868, and new car came out in Nov., 1868. Named "Monongahela." Built I suppose at Ft. Wayne. Was shopped at Allegheny June 1st to 30th, 1871, for varnish, and trucks repaired again at Allegheny, Jan. 3rd to Feb. 10th, 1872. Continued running on the P., Ft. W. & C. R. R. lines till July 10th, 1873, when it was condemned and settled for July 19th, 1873.

1406 Car 53.

This car was built by the O. & M. R. R., say 1859, bought by C. T. Co. July 5th, 1865. Very poor car. Condemned in March, 1870, at Cinti. Destroyed at Cochran Nov., 1874. See wrapper No. 3959, July 28th, 1881.
Settled for, see letter of gen. supt., 4–1–84.

Car 54.

This car was built by the O. & M. R. R., say 1859. Was a stateroom car with a row of single berths on one side of aisle, and staterooms on the other. Was bought Jan. 5th, 1865, and remained idle until Aug. 1st, 1869, when it was shopped, remodeled and came out a 10-sec. silver palace Jan. 6th, 1870. Shopped Dec. 10th, 1870, to

Jan. 15th, 1871, for varnish, &c. Again at E. St. Louis Mch. 7th, to 28th, 1872, for varnish, &c.

Was again shopped at Cochran July 18th, to Oct. 3rd, 1873, for painting and gen'l repairs, and at E. St. Louis Jan. 12th, to Feb. 3rd, 1874. Has always run on O. & M. R. R. lines. Shopped Cochran Jan. 5, to Apl. 3, 1875, painting, etc. 9 Cochran 6 | 1 to 7 | 23 '76 for 27. Settled for May 8 | 82, see letter 3 | 11 | 84 from gen. supt.

Car 55.

This car was built by Bolton, Dykeman & Co. Delivered May 12th, 1865, and assigned to Bellefontaine R. R. It has been named "Union."

1407 Last service Feb., 1876. See letter of E. H. G., 6 | 26 | 86.

Car 56.

This car was built by Bolton, D. & Co. Delivered May 12th, 1865, and assigned to Bellefontaine R. R. and run on Penna. R. R. Named "Valley Forge." Cut up in Altoona yard Dec. 6th, 1870.

Car 57.

This car was built by Bolton, Dykeman & Co. Delivered July 22nd, 1865, and assigned to Bellefontaine R. R. and run until June, 1870.

Last service Jan., 1885. See letter E. H. G., 6–28–86.

Car. 58.

This car was built by Bolton, D. & Co. Delivered July 22nd, 1865, and run on Penna. R. R. Named "Juniata." Cut up in Altoona yard Nov. 20th, 1870.

Car 59.

This car was built by Bolton, Dykeman & Co. Delivered June 4th, 1865, a 10-sec. car, named "City of Wilmington." Run on the New York and Wash'n lines until Sept., 1868, when it was run on the P. & E., or Penna. R. R. Was burned in Erie yard in 1870. Replaced by car 189, "Erie."

1408 Car 60.

This car was built by Bolton, D. & Co. Delivered June 4th, 1865, and run on the N. Y. and Washn. lines until Mch. 19th, 1869, when it was transfd. to Phila., Erie and Penna. R. R.

It was a- 11-sec. car.

Car 61.

This car was built by Bolton, D. & Co., Oct. 28th, 1865, and assigned to the B. & O. R. R. Was remodeled at Jackson & Sharpe's, coming out Feb. 16th, 1869. Condemned Mch., 1871.

Car 62.

This car was built by Bolton, D. & Co. Delivered October 28th, 1865, and assigned to the B. & O. R. R., and probably remodeled in 1868. Condemned Aug. 23rd, 1871, and sent to Mt. Clare.

Car 63.

This car was built by Bolton, D. & Co. Delivered Nov. 23rd, 1865, and assigned to the Marietta & Cinti. R. R.

Has never had any but old single up. berth arrangement. Has not run any since May, 1870. Condemned and dropped April, 1871.

1409 Car 64.

This car was built by Bolton, Dykeman & Co. Delivered Nov. 23rd, 1865, and assigned to the Marietta & Cinti. R. R. It was shopped at Zelosky, July 12th, 1869, to be remodeled. Come out a 10-sec. silver palace car Feb. 28th, 1870. Run on the M. & C. R. R. until Nov. 1st, 1872, when it was dropped (unsafe). From which time it has been lying idle at Chillicothe, Ohio. R. R. Co. will not use car and will not condemn it. Dropped by order E. H. G., 8–24–85.

Car 66.

This car built by Bolton, Dykeman & Co. Delivered Jan'y 24th, 1866. Assigned to Pgh., Col. & Cinti. R. R.

It stood on side track at Pgh. until Jany., 1871, when it was condemned and settled for Oct. 16th, 1875.

Car 67.

This car was built by P. C. & St. L. R. R. Co. (to replace old car destroyed in accident) at Steubenville. Delivered Oct. 1st, 1869. A silver palace car.

Commenced service in N. Y. and Cinti. line. Shopped at Steubenville Nov. 6th, 1871, until Mch. 26th, 1872, genl. repairs, and continued to run in the N. Y. and Cinti. line.

9 at se. 8 | 19 to 3 | 4 1876, for 28.

1410 Lay idle at Cinti. during '78 and '79 and settled for by P. C. St. L. Ry. Co. Jany. 5, 1880.

D. N. W., 1 | 8 | '80.

Car 68.

This car was built by Bolton, D. & Co. Delivered Feb'y 14th, 1866, and assigned to P. F. W. & C. R. R., named "Alliance," and run up to Mch. 23rd, 1870, when cut up in Allegheny yard and a new car, an open Pullman, built to replace it.

Car 65.

This car was built by Bolton, D. & Co. Delivered July 25, 1865, and was assigned to Pgh., Col. & Cinti. R. R. Was destroyed Mch. 17th, 1869, in accident. New car built by Pa. R. R., Altoona, a

mate to No. 19, delivered June 16th, 1870, and placed in the N. Y. & Cinti. lines. Shopped at Philadelphia, Dec., 1871, to Jan'y 20th, 1872, for varnish, &c. Again at Pgh., Aug. 5th to 31st, for varnish, &c. Again at Phila., Feb'y 1st to 26th, 1873. It lay at Phila. July, 1874, until Mch. 9th, 1875, when it was shopped at West Phila. for gen'l repairs. It has always run Pa. R. R. lines. 9 at West Phila. 3 | 9 to 8 | 7, 1875, for 28. 9 at Mt. V. 6 | 17 to 7 | 14, 1876, for 27. See D. N. W., 10 | 25 | 78. Condemned and stored at Altoona.

Car 69.

1411 Built by P. F. W. & C. R. R. at Ft. Wayne. Delivered Aug. 1st, 1867, a silver palace car. Named the "Ft. Wayne," and run in the through line.

This and No. 75 at Altoona, and No. 76 at West Phila., were built and came into service at the same time. There was some sphere of rivalry in the matter as to style, quality and cost of cars.

It was run on the P., Ft. W. C. R. R. until July 10th, 1871, when it was condemned. Settled for July 19th, '71.

Car 70.

This car was built at Altoona by Pa. R. R. Delivered a silver palace named the "Altoona," June 1st, 1867, and run in the through lines.

Shopped at Altoona, Nov. 24th, 1869, for gen'l repairs. Come out May 1st, 1870. Was on the Vandalia in the summer of 1870; on mileage basis to Penna. R. R. Was shopped at Phila. Jan'y. 15th, 1871, to Mch. 8, '71, for painting, &c.

At Altoona June 6th to 16, '71, for varnish outside. It run on the Pa. R. R. lines until April, 1873, when it was cut up, Apl. 23rd, at West Phila. shops and settled for Sept., 1873.

Car 71.

This car was built at Altoona by Penna. R. R. to replace car burned. This car was built in one month. A silver palace named "Susquehanna," run in the Chicago lines until Mch. 10th, 1870, when it was run with No. 38 on the Allegheny Valley R. R.,
1412 paying the Pa. R. R. Co. mileage until Oct., 1870, when it was shopped at W. Phila. Out May 31st, 1871. Remodeled into an open Pullman car. It was shopped again at Phila. May 4th, 1872, to 21st, 1872, for varnish and replating and minor repairs.

It was shopped again at W. Phila. Feb. 1st, to 12, 1873, for varnish and reupholstering, and at Steubenville Nov. 20th, to Dec. 10th, 1873, on a | c. wreck in Pgh. yard. It was chartered to "Great Southern circus" during May, June and July, 1874. Oct., 1877, sent to Altoona to be condemned. See D. N. W. 10 | 25 | 78.

Car 72.

This car was built by Bolton, D. & Co. Delivered Mch. 1st, 1867, as a silver palace running in N. Y. and Cinti. or Chicago lines.

Was shopped for gen'l repairs at West Phila. Apl. 20 | 1869, and came out July 20th, 1869.

It was shopped at Altoona Jan. 2, 1871, to Mch. 1st, 1871, for painting and varnish and new sash, and from Aug. 12th to Sept. 6th, at Altoona for varnish outside. At Renovo Feb'y 6th to 29th, 1872, for varnish, trucks and platforms repaired. It was chartered to "Barnum's show" May 12th to Nov. 4th, 1872. It lay as extra in West Phila. yards from Nov., 1872, to Apl. 3rd, 1873, when it was chartered by the Trans-Atlantic museum. It was returned to Pgh. Aug. 2nd, 1873. It lay idle in West Phila. yards from Aug., '73, to April, 1874, when it was condemned and dropped.

1413 Car 73.

This car was built by Bolton, D. & Co. Delivered in Ap'l, 1867, and assigned to the Pgh., Ft. W. & C. R. R. Named "Mansfield." Shopped for remodeling at Allegheny Feb. 6th, 1870. Coming out a 10-sec. silver palace car Aug. 29th, 1870. It was shopped at Allegheny Jan. 23rd, 1871, for varnish outside. Out Feb. 13th. Shopped again at Allegheny Nov. 24th, 1871, to Jan. 3rd, 1872, for varnish, and run on the P. F. W. & C. R. R. until June 30th, 1873, when it was condemned.

Car 74.

This car was built by Bolton, D. & Co. Delivered in April, 1867, and assigned to P. F. W. & C. R. R. Shopped for remodeling at Allegheny Aug. 20th, 1869, and came out Sept. 31st, 1869, a 10-sec. silver palace car. It was shopped at Allegheny Mch. 4th to Apl. 12th, 1872, for varnish, minor repairs. It run on the P. F. W. & C. lines until June 30th, 1873, when it was condemned.

Car 75.

This car was built at Altoona by Pa. R. R. Delivered Aug. 1st, 1867, named "Chicago." "A silver palace car" and run in the "through line." Shopped at Altoona for gen'l Jan'y 13th to May 20th, 1870. Run on Vandalia road on the mileage basis with No. 70 in 1870. (See 69.)

1414 Shopped at Altoona Apl. 20th, 1872, to June 24th, 1871, received painting, varnishing, and silver replated, and new floor carpet.

Shopped at Philada. Jan'y 7, 1872, to 20th, 1872, for varnish and trucks repaired. Run on the Pa. R. R. lines until Sept., 1872, when she was condemned.

Car 76.

This car was built at West. Phila. by Pa. R. R. Delivered Aug. 1st, 1867, a silver palace car named "New York." Has run in N. Y. & Chicago lines. (See No. 69.)

Shopped at W. Phila. Feb. 12th to Mch. 25th, '71, for gen'l repairs.

Shopped at Philada. Jan. 20th to Feb. 10th, 1872. Had varnish and trucks repaired.

Transfd. to construction dept. Nov. 23rd, 1872. Rec'd from construction dept. (formerly) June 26th, 1873, from which time it has been running on the Pa. R. R. line.

Destroyed by fire in Pittsburgh at the great R. R. riot July 22nd, 1877. Settled for Feb. 6, 1880.

Car 77.

This car was built by the P., F. W. & C. Co. at Ft. Wayne on some plan of their own. Compartment car. Delivered Feb. 1st, 1868, and sold soon to the C. T. Co, 1st-class workmanship, but a worthless plan. She lay idle at Chicago from Jan. to Aug., 1871,
1415 and run as extra from Sept., 1871, to Mch. 17th, 1872, when it was shopped to May 2nd, 1872, for varnish and minor repairs. It run as extra on P., Ft. W. & C. lines until Jan. 1st, 1873, when it was dismantled and lay in Allegheny yards until Dec., 1874, when it was condemned and settled for Oct. 16th, 1875, at $7,000.

Car 78.

This car was built by the P., Ft. W. & C. R. R. Co. at Ft. Wayne on some plan of their own. Compartment car. Delivered Feb. 1st, 1868, and sold soon to the C. T. Co., 1st-class workmanship, but a worthless plan. It lay idle at Chicago Jan. to Aug. 1871, and as extra at Chicago and Pgh. from Sept. to Feb. 12th, 1872, when it was shopped to Mch. 21st, 1872, for varnish and minor repairs. It run as extra on P. Ft. W. & C. R. R. lines until Jan. 1st, 1873, when it was dismantled in Allegheny yards and lay there until Dec., 1874, when it was condemned, and settled for June 25th, 1875, $7,000.

Car 79.

This car was built by Jackson & Sharpe, Wilmington, Del. Delivered July 29th, 1868, and assigned to C. C. & I. C. R. R. and run between Columbus and Chicago. Shopped Oct. 16th, 1869, at Columbus for remodeling, and came out Feb. 7th, 1870, a silver palace car. Was shopped at Logansport Dec. 24th, 1870, to Jan. 1st, 1871, for minor repairs. Was shopped at Columbus Oct. 6th,
1416 1871, to Mch. 26th, 1872, for gen'l repairs. It continued running in the Chicago & Col. line until Apl. 1st, 1873, when it ran as extra between Chicago, Col. & Cinti. to Aug. 1st, 1873, when it lay at Columbus to Mch., 1874, when it was condemned and settled for Oct. 16th, 1875, $7,000.

Car 80.

This car was built by Jackson & Sharpe. Delivered July 29th, 1868. Named "Indiana," and assigned to the C., C. & I. C. R. R., and run between Chicago and Columbus. Shopped Dec. 11th, 1870, at Logansport for painting, etc. The R. R. Co. decided to take the car and build a new one in place of it. Settled for Oct. 16th, 1875.

Car 81.

This car was built by P. W. & B. Co. at Wilmington. Delivered Sept. 23rd, 1868, a silver palace car. Assigned to the N. York and Washington lines.

It lay idle from Aug. 7th, '71 to Sept. 1st, at Washington, and then run in the N. York and Lynchburgh line till Nov. 20th, when it was shopped at Wilmington to Dec. 21st, 1871, for painting, etc., when it again run bet. N. Y., Washington & Lynchburg.

Was shopped at Wilmington Aug. 2nd, 1872, for remodeling. Out Mch. 1st, 1873, remodeled into an open Pullman and run in the N. Y. and Washington lines. The interior was partly burnt at Charles St. depot, Balto., May 3rd, 1874. Shopped at
1417 Wilmington (J. & S.) May 9th, 1874, to Mch. 16th, 1875. Gen'l reprs.

It lay at Philada. until March 21st, when it com'd service on mileage basis on Lehigh Valley R. R., and where it remained until April 22nd, '75, when it again lay at Phila. until June 19th, 1875, when it again commenced service in the L. V. R. R. as before.

Transferred to St. Louis division April 11 | 76.

Last service Dec. 1876, see letter of E. H. G., 6 | 26 | 86.

Car 82.

This car was built by the P., W. & B. R. R. Co. at Wilmington. Delivered Sept. 23rd, 1868, a silver palace car. Assigned to the N. Y. & Washn. lines.

It lay idle at J. City from Aug. 5th, 1871, to Sept. 29, '71, when it was shopped at Wilmington. Out Nov. 5th, '71. Gen'l repairs, when it again run on the N. Y., Washn. & Lynchburgh lines until Aug. 19th, 1872, when it was shopped at Wilmington for remodeling. Out Mch. 1st, remodeled into an open Pullman car, 1873; and again run in the N. Y., Balto. and Washn. lines until June 1st, 1874, when it lay as extra at J. City until Nov. when it run on the G. R. & J. R. R. until Dec. 26th, 1874. It lay as extra Cinti. till Jan. 8th, 1875, when it was shopped at Dayton (B., S. & Co.). Out Mch. 29th, gen'l reprs. Transferred to St. Louis division April 11, 1876. See letter E. H. G. 6 | 26 | 86.

Last service Dec. 1876.

1418 Car 83.

This car was built by the P., W. & B. R. R. Co. Delivered Mch. 1st, 1869, a silver palace car assigned to the N. Y. and Washn. line.

Cost price when new $9,750.00. It run on the N. Y., Washn. & Lynchburgh line till Sept. 1871, when it was transfd. to the Southern div.

Rec'd back Apl. 10, 1874, and transfd. to the constn. dept. for remodeling Apl. 15, 1874. Rec'd from constn. dept. May 6, 1875. Remodeled into an open Pullman car, and again com'd service in the Balto. & Danville line where it has since remained.

9 at Mt. C. 11 | 8 to 11 | 20 for 27. Again at Mt. C. Sold to B. & O. Ry. Jan. 5, 1882, for $7,000.00.

Car 84.

Built by the P., W. & B. R. R. Delivered Mch. 1st, 1869. Assigned to the N. Y. & Washn. lines. Cost when new, $9,750. It run on the N. Y., Phila., Washn. & Lynchburg lines with the exception of a few trips in the Balto. & Pgh. line via Connellsville.

In accident on P. & C. R. R. and shopped at Connellsville, May 3 to 26, 1871.

Transfd. to Southern div. in Sept., 1871. Recd. back Apl. 10, 1874, and transfd. to constn. dept. Apl. 15, 1874. Recd. from constn. dept. May 29th, 1875. Remodeled into an open Pullman car. Named "Pamlico." Com'd service same date on line Balto., Lynchburg and Danville. 9 Mt. Clare, 7 | 21 | '76 to 8 | 25 | '76, 10 & 28. Sold to B. & O. Ry. Co. for $6,750, Jan. 5, 1882.

1419 Car 85.

This car was built by Jackson & Sharpe. Delivered Feb. 12th, 1869, a silver palace car with rotunda vestibules. Assigned to the P., Ft. W. & C. R. R., and run in the N. Y. and Chicago lines; was burned in the train Mar. Plymouth, Ind., Dec. 23rd, 1870. Settled for Sept. 16th, 1874.

Car 86.

This car was built by Jackson & Sharpe. Delivered Feb. 12, 1869, a silver palace car, with rotunda vestibules. Assigned to P., Ft. W. & C. R. R. Co. Shopped at Allegheny, Nov. 14th, 1870, to Feb. 5, 1871, for varnish and painting. Was shopped again at Allegheny, Oct. 13th, Nov. 21st, 1871. Oct Dec. 21st. Had varnish, &c. Was shopped at Allegheny July 30th, 1872, and out Sept. 14th, 1872, general repairs. Was shopped at Altoona Feb. 24th, 1873, on ac. of wreck on Penna. R. R. Was transfd. to Allegheny Mch. 29th, in chg. of construction dept. Recd. from constn. dept. (formally) May 12th, 1874. Remodeled into a single drawing-room car. 9 at Ay. Sept. 7 to Oct. 20th, 11 | 27. Again at Ay. May 13 to June 6th, 11, 27. Transfd. to mlge. basis May 1, 1883.

Car 87.

This car was built by Jackson & Sharpe, Wilmington. Delivered Feb. 20th, 1869, and commenced running N. York and Louisville lines a silver palace car. Was shopped at West Phila. shops July 20th; out Oct. 10th, 1971; remodeled into an open Pullman
1420 car. Was shopped at Jersey City, Apl. 11th to 27th for varnish, &c., at Phila., Mch. 18th to June 10th, 1873, for varnish, &c., and at Bordentown June 24th, '74, to July 28th, '74, for varnish, &c.

Shopped at Meadows Nov. 11, 1875, for general repairs. Sent to Altoona Oct. '77, to be condemned. See D. N. W., 10 | 25 | '78.

Car 88.

This car was built by Jackson & Sharpe. Named "Lexington." Delivered Feb. 20th, 1869, and commenced service in the N. Y. and

Louisville line, a silver palace car. Assigned to Penna. R. R. Was shopped at Phila., April 22nd, out July 10th, '71, remodeled into an open Pullman car. Shopped at Bordentown, Dec. 28th, '72, out Mch. 1st, '73. Had varnish, &c. Shopped at W. Phila., Aug. 27th, '73, out Feb. 12th, '74. Had varnish, &c. Has always run on the Penna. local and through lines. Sent to Altoona, Oct. '77, to be condemned. See D. N. W., 10 | 25 | 78.

Car 89.

This car was built by Jackson & Sharpe, Wilmington. Delivered Apl. 6th, 1869. A silver palace car, named "Eclipse." Commenced service in the N. Y. and Louisville lines. Was shopped at Phila., Oct. 28th, 1871, out Mch. 23rd, 1872, remodeled into an open Pullman car. Was shopped at Phila., July 1st, 1873, and out Dec. 6th, 1873.

Shopped at Meadows, Nov. 11, 1875, for gen'l repairs, out July 29, 1876.

Sent to Altoona, Mch., 1878, to be condemned. See D. N. W., 10 | 25 | 78.

1421 Car 90.

This car was built by Jackson & Sharpe. Delivered Apl. 6th, 1869, a silver palace car. Assigned to the Penna. R. R. Commenced service in the N. Y. and Louisville line. Was shopped Jan. 14th, 1871, for minor repr. on ac. of wreck on P. R. R.

Shopped at Phila., July 22nd to Oct. 23rd, 1871, remodeled into an open Pullman car. Was shopped at Pgh., Aug. 31st to Sept., 1872, for varnish, etc. Was shopped at Phila., Oct. 23rd, on ac. of accident on Nov. 11th, '72. Was shopped at Pgh., May 12th to July 9th, 1873, for varnish, replating silver, &c. Always run in the Penna. through and local lines.

Condemned, and lay at Altoona till Feb. 23rd, 1875, when it was settled for.

Car 91.

This car was built by C. C. & I. C. R. R., Columbus, Ohio. Delivered June 25, 1869. Assigned to Penna. R. R. Commenced service in the N. York and Louisville lines. From May, 1872, to Sept. 12th, '72, it was running bet. St. Louis, Cinti. and Cinti. and Chicago when it again commenced running on the lines of the Pa. R. R. It was transfd. to constn. dept. Apl. 26th, 1873, remodeled into an open Pullman car. Shopped at Phila. Oct. 26th, 1874, to Nov. 14th, 1874, for varnish, &c. Again at W. Phila. Dec. 13th, '75, painting, &c., out March 14th, 1876. Again W. Phila. Dec. 26 to 30 | '76, 11 & 27. Condemned and stored at Altoona
1422 D. N. W. 5 | 8 | '79. Last service Oct., 1885. See letter E. H. G., 6 | 26 | '86.

Car 92.

This car was built by the C. C. & I. C. R. R. at Columbus, O. Delivered June 25th, 1869, a silver palace car, named "Jefferson-

ville." Assigned to the Pa. R. R. Commenced service in the N. Y. and Louisville line. Was shopped at Altoona June 29th to Sept. 9th, 1871, for gen'l repairs. Was shopped at Philada. Feb. 6th to 28, 1872, for varnish, &c. Was wrecked on Pa. R. R. Mch. 22nd, 1872.

Car 93.

This car was built by Harlan and Hollingsworth, Wilmington, Del. Delivered Apl. 12th; named "Miami." Assigned to N. York and Cinti. lines. Shopped at Altoona Jan. 30th, 1871, to Apl. 14th, '71, for gen'l repairs. It run in the Chicago and Pgh. lines until Nov., 1871, when it again ran on the Pa. R. R. lines. Shopped at Phila. Mch. 6th to Aug. 24th, 1872, remodeled into an open Pullman car, and continued running on the Pa. R. R. line. Shopped at Philada. Mch. 27th to Apl. 19th, 1873, for varnish, &c. Has been lying at Jersey City since July, 1874.

Shopped at Phila. Sept. 8 to Dec. 7, 1875, painting & gen'l repairs. Condemned and stored at Altoona. See D. N. W. 5 | 8 | '79.

1423 Car 94.

This car was built by Harlan & Hollingsworth, Wilmington, Del. Delivered Apl. 12th, 1869; named "Tuscarora," a silver palace car, and commenced service in the N. Y. and Cinti. line, where it remained until June, 1871. It lay as extra at Louisville during June, July and August, 1871, when it commenced running in the N. Y. and Louisville and Cinti. lines, where it remained until Dec., 1871, when it ran as extra in the Cinti. dist. until June, 1872, when it was shopped Phila. June 18th to Oct. 12th, 1872, remodeled into an open Pullman car. It again commenced running on the Pa. R. R. lines, and continued until Mch. 31st, 1874, when it was shopped at Altoona for gen'l reprs., out Oct. 16th, 1874, and is now an extra at Washington. Jan., 1877, sent to Altoona to be shopped, when it was decided that car should be condemned.

Car 95.

This car was built by H. & Hollingsworth, Wilmn., Del. Delivered Apl. 30, 1869, a silver palace car. Assigned to the Pa. R. R., and commenced in the N. Y. and Cinti. lines. Shopped at Altoona Jan. 18th to Mch. 19th, 1871, gen'l reprs., and again commenced running on the Pa. R. R. lines until June, 1871, when it was transfd. to the Pgh. & Chg. lines (June 20th), where it remained until Nov. 16th, when it was shopped at Allegheny for varnish, &c. Out Dec. 3rd, 1871, and run on the Pa. R. R. lines until Aug. 2nd, 1872, when it was shopped at Phila. for remodeling. Out Nov. 23rd, and at Altoona Sept. 12th, 1873, to Mch. 21st, 1874, for painting,
1424 &c. It run on the G. R. & J. R. R. July to Oct., 1874, when it was transfd. to the Washn. and Rochester line. Rec'd gen'l repairs at W. Phila., Aug. 28 | 75. Rec'd 27 at Mt. Vernon. May 1st, 1876, condemned and stored at Altoona. See D. N. W., 5 | 8 | 79.

Car 96.

This car was built by Harlan & H., Wilmington, Del. Delivered Apl. 30th, '69, a silver palace car, named "Sciota." Assigned to the Penna. R. R. Commenced service in the N. Y. and Cinti. line. Run in the St. Louis via Vandalia part of 1870. Was shopped at Altoona Nov. 30th, 1870, until Jan. 30th, 1871, for painting, &c. Shopped at W. Phila. Dec. 8th, '71, until Apl. 17th, 1872, for remodeling into an open Pullman. At Phila. Mch. 15th, 1873, to May 20th, 1878, for painting, &c. At Phila. Oct. 22nd, Dec. 2nd, for painting, &c. Rec'd 10 & 28th at W. Phila. Oct., '75. Condemned; stored Altoona. See D. N. W., 10 | 25 | 78.

Car 97.

This car was built at W. Phila. by Pa. R. R. Delivered Aug. 29th, 1869, a silver palace car. Assigned to Pa. R. R., and commenced service in the N. Y. and Chicago line.

Was shopped at West Phila. July 20th to Aug. 28th, 1871, for painting, &c. At Phila again in Jan., 1872, until Feb. 10th, 1872, for varnish, &c. Was wrecked on Pa. R. R. in Feb., 1873, and transfd. to constn. dept. in Apl. 1873, out July 30th, '73, re-
1425 modeled into an open Pullman car, when it commenced running on the W'msport & Oil City line until Nov., 1873, from which time it has been running in the Washn., Buffalo & Rochester lines, and Penna. through and local lines. Rec'd 10 & 28 at W. Phila., Dec. 25 | 75. Rec'd 27 W. Phila., May 29 | 76. Condemned; stored Altoona. See D. N. W., 5 | 8 | 79.

Car 98.

This car was built by Pa. R. R. Co. at West Phila. Delivered July 13th, 1870, a rotunda silver palace car. Assigned to Pa. R. R. Commenced service in N. Y. and Chicago lines. Shopped at Phila. Jan. 12th to 28th, 1871, for varnish, &c. Shopped at Phila. Dec. 26th, 1871, to June 15th, 1872; remodeled into an open Pullman car. Shopped at Phila. June 7th to Sept. 12th, '73, for painting, &c. Again at Phila. Sept. 26th, 1874, to Oct. 5th, 1874, for varnish, &c. Rec'd 10 & 28 at W. Phila., Jan. 15–76. Condemned; stored Altoona. See D. N. W., 10 | 25 | 78.

Car 99.

This car was built by Bolton, D. & Co. for the Southern Transptn. Co., as car 13, probably in 1866. Run in various places, and bought by C. T. Co., Oct. 1st, 1869. Cut up in West Phila. yard May 26th, 1870. Value of car cr. P. P. Car Co. on a | c in settlement made in Dec., 1870, at Altoona.

Car 100.

This car was built by Bolton, D. & Co. for the Southern Transptn. Co. as car 10, probably in 1866. Sold to C. T. Co. Oct. 1st,
1426 1869. Shopped at Harlan, Hollingsworth & Co. Nov. 6, 1869, to be remodeled. Came out a 10-sec. silver palace car Jan.

17th, 1870, and assigned to Louisville, Cinti. and Lexington R. R. Was shopped at Louisville June 10th, 1872. Out Aug. 1st, 1872, for painting, varnish and replating silver, and gen'l repairs. It continued running on this road until Dec., 1874, when it was condemned, and is *h*ow lying at Louisville.

Car 101.

This car was built by Bolton, D. & Co. for the Southern Transptn. Co. in 1866 as car 9. Was bought by C. T. Co. Mch., 1869, and kept on B. & O. R. R. as car 101. Condemned, 1870.

Car 102.

This car was built by Bolton, D. & Co. for the Southern Transptn. Co. as car 5. Bought by the C. T. Co. Mch., 1869. Named "Youghiogheny," and kept on Penna. R. R. Condemned and cut up in West Phila. yard Dec. 31st, 1869. Value of car cr. P. P. Car Co., on a | c in settlement made in Dec., 1870, at Altoona.

Car 103.

This car was built by the O. & M. R. R. at Cochran. Delivered June 14th, 1869, a silver palace car. Assigned to O. & M. R. R. Commenced service on the O. & M. R. R. lines.

Shopped at E. St. Louis January 5th, 1872, to the 27th for paint and varnish. Again at Cochran Oct. 11th, 1872, until Mch. 1427 18th, 1873, for painting, replating, silver &c. It lay idle at Cinti. during Mch. 1874, and shopped at Cochran Apl. 22nd to May 23rd, 1874, for varnish, replating, silver &c. Has always run on the O. & M. R. R. line. Rec'd 10 & 28th at Cochran, May 29, 1876.

Settled for May 8, '82. See letter of gen'l sup't 3*| 11 | 84.

Car 104.

This car was built by the Little Miami R. R. at Columbus, O. Delivered Oct. 18th, 1869, a silver palace car. Assigned to P. C. & St. L. R. R. Commenced service in the N. Y. and Cin'ti line. Shopped at Columbus Sept. 30th to Dec. 8th, 1871, for gen'l. reprs. and at Columbus Feb. 3rd, to May 14th, 1873, for varnish, &c. At Columbus Nov. 29th, 1873, to Feb. 3rd, 1874, for minor repr's, on a | c of wreck. It lay at Cin'ti from June 1st to Dec., 1874, when it was condemned and is now being used by the P. C. & St. L. Co. as a coach.

Settled for Oct. 16th, 1875, at $7,000.

Car 105.

This car was built by the Little Miami R. R., Columbus, O. Delivered Oct. 18th, 1869, a silver palace car. Assigned to P. C. & St. L. R. R. Commenced service in the N. Y. and Cin'ti line. Was shopped at Altoona May 16th, to May 20th, 1871, reprs. to trucks,

at Columbus Sept. 29th to Dec. 8, 1871 for paint and gen'l reprs. At Columbus again Feb. 3rd to May 14th, 1873 for varnish, &c. At Columbus June 13th to 25th, 1874, for reprs. to trucks. It
1428 lay at Cinti. from June 1st to Dec., 1874, when it was condemned and is now being used by P. C. & St. L. Co. as coach. Settled for Oct. 16, 1875, at $7,000.

Car 106.

This car was built in the shops of the C. H. & D. R. R. Co., Cin'ti, Ohio, a silver palace car. Delivered Sept. 14th, 1869, and run in the Cinti. and Chicago line by the way of Lima until that was discontinued, and then by the way of Richmond. Was transfd. to the Southern div. May 1st, 1871. Rec'd back June 30th, 1872, when it commenced running in the Cinti. & Chicago line. Was shopped at Cinti. Aug. 18th, 1873. Out June 1st, '74, remodeled into an open Pullman car. Has since run in the Cinti., Chicago & Detroit lines. Shopped at Cinti. Sept. 9, to Nov. 27 | 75, 10 & 28. Again at Cinti. Aug. 24 to Sept. 7 for 11 & 27.

Transfd. to const. dept. at Detroit 12 | 17 | 78. Rec'd back June 3, 1879, and transfd. to Chicago div.

Came from const. dept. remodeled to a hunting car named "Isaak Walton."

Car 107.

This car was built in the shops of the C. H. & D. R. R. Co. at Cinti., O. A silver palace car. Delivered Sept. 14th, 1869, and assigned to the C. H. & D. R. R., and run in the Cinti. and Chicago lines by the way of Lima until that was discontinued, then by the way of Richmond. Was transfd. to Southern div. May 1st, 1871, and rec'd back June 30th, 1872. Commenced running in the
1429 Cinti. and Chicago line via Richmond. Shopped at C. H. & D. shops, Cinti., July 28th, '73, out June, 1874, remodeled into an open Pullman car. It has since run in the Cinti., Chg. & Detroit lines. Shopped Cinti., Sept. 9 to Nov. 27, 1875, 10 & 28.

Transfd. to constn. dept. at Detroit, 12 | 17 | 78.

Recd. back June 3, 1879 & transfd. to Chgo. div.

Came from constructn. June 3d, '79, remodeled to hunting car named "Davy Crockett."

Car 108.

This car was built by the P. W. & B. R. R., at Wilmington, Del. A silver palace car. Delivered Oct. 17th, 1869, and commenced service on the N. Y. and Wash'n lines. Shopped at Wilmington Apl. 20th to June 19th, 1871, for gen'l reprs. Again at Wilmington, May 27 to Aug. 1st, 1872, for varnish, &c. Transfd. to constn. dept., Mch. 28th, and lay idle until July, 1873, between which time she made some few trips.

Rec'd from constn. dept. May 7th, 1874, when it commenced running bet. Cinti., St. Louis and Louisville, where it remained until Apl., 1875, when it was side-tracked at Detroit shops, waiting to be

shopped. Shopped Detroit, April 12th to July 1st, gen'l repairs. Transfd. St. Louis division July 1st, '75.

Last service Dec. 1876. See letter E. H. G., 6 | 26 | 86.

1430 Car 109.

This car was built by the P. W. & B. R. R. Co., Wilmington. Delivered Oct. 17th, 1869, a silver palace car, and commenced service on the N. Y. and Washn. lines. Shopped at Phila. Jan. 15th to Feb. 20th, '71 for painting varnish, &c. Was transfd. to constn. dept. June 10th and lay idle until Sept., 1873, bet. which time it made one or two trips. Rec'd from constn. dept. May 7th, 1874, remodeled into an open Pullman car, and has since run in the Cinti., St. Louis and Louisville lines until Apl., 1875, when it was side-tracked at Detroit shops waiting to be shopped. Shopped at Detroit April 12 to July 1, 1875. Transfd. to St. Louis division, July 1, 1875.

Last service, Dec. 1876. See letter E. H. G. 6 | 26 | 86.

Car 110.

This car was built by Harlan & H. Delivered Aug. 28th, 1869. Assigned to the Pa. R. R., a silver palace car. Commenced service in the Pa. R. R. through lines. Shopped Altoona from June 8th to Aug. 5th, 1871, when it commenced in the Phila. and Wmsport. line until Oct., 1872, when it commenced running in the Phila. & Altoona line, and continued running in the Pa. R. R. lines until Dec. 12th, 1872; when it was shopped at West Phila. for remodeling in chg. of constn. dept. Received from constn. dept. Mch. 1873, remodeled into an open Pullman car. Was partly burnt at J. City yard Apl. 17, '73. Shopped Apl., 1873, at Phila. Out Aug. 31st, 1873. See D. N. W. 10 | 25 | 78.

1431 Car 111.

This car was built by Harlan & Hollingsworth. Delivered Aug. 28th, 1869. Assigned to the Pa. R. R. (A silver palace car.) Commenced running in the Pa. through lines. Shopped, Altoona, June 15th to 29th, for minor repairs, 1871. Again at Phila., Feb. 28th; July 27th, 1872, remodeled into an open Pullman car. Again at Phila., M'ch 3d to 14th, 1873, for varnish, &c. Again at Phila., July 7th to 15th, '73, for varnish, &c. Again at Phila., June 26th, '74 (nominally) until M'ch 12th, '75, when it was transfd. to the Altoona shops for gen'l rep'rs. Out July 26, painted and gen'l reprs. Sent to Altoona, Oct., '77, to be condemned. See D. N. W., 10 | 25 | 78.

Car 112.

This car was built by N. C. R. R. at York, Pa. Delivered Dec. 18th, 1869, a silver palace car. Assigned to N. C. R. R., and commenced service bet. Balto. and Pgh. via Harrisburg. Was shopped at York, Mch. 2d, to Apl. 7th, 1881, for painting, &c. Again at York, Oct. 7th to 18th, '71, for varnish and minor repairs.

Again at York, Oct. 30th to Nov. 6th, for minor repairs on a | c accident, 1871. At York, Mch. 5th to Apl. 1st, '71, for varnish, &c. Again at York, Aug. 31st to Sept. 14th, '72, for berths and minor repairs. At York, Nov. 11th, '72, to Dec. 5th, '72, varnish, &c., and Oct. 17th to Nov. 12th, 1873, for painting, &c. It lay at Calvert St. Sta., Balto., Aug., 1874, to Mch. 3d, 1875, when it was shopped at York, Mch. 3d to 13th. Sent to Altoona, Oct., '77, to be condemned. D. N. W., 10 | 25 | 78.

1432 Car 113.

This car was built in the shops of the N. C. R. R. York, Pa. Delivered Dec. 18th, 1869. A silver palace car. Assigned to N. C. R. R. Commenced service bet. Balto. & Pgh. via Harrisburg. Was shopped at York Jan. 10th, 1871, to Feb. 23rd, 1871, for painting, &c. Again at York Oct. 6th to 21st, 1871, for varnish, &c. At York May 12th to 22nd varnish, &c. At York Apl. 7th to May 7th, 1873, varnish, replating, silver, &c. Again at York Nov. 12th to Dec. 12th, 1873, painting, &c. It lay at Calvert St. station, Balto., from Aug. 1874, until Mch. 16th, when it was shopped at York for varnish outside. Out Mch. 27th, '75, when it was assigned to the Phila. dist. where it remained as an extra on Pa. R. R. lines. Sent to Altoona Oct. '77, to be condemned. See D. N. W., 10 | 25 | 78.

Car 114.

This car was built by Harlan & H. Delivered Oct. 20th, 1869. A silver palace car assigned to the Penna. R. R. and commenced service in their through lines. Shopped at Phila. Mch. 20th to 28th, 1871, for repairs to roof. At Altoona June 8th to July 30th, 1871, gen'l reprs. Again at Philada. Aug. 20th to Dec. 21st, 1872, remodeled into an open Pullman car. At Philada. June 21st to July 3rd, 1873, varnish, &c. At Philada. Mch. 24th to May 15th, '74 for varnish, replating, silver, &c. It was loaned to G. R. and I. R. R. from July, 1874, until Sept., '74, when it was returned and commenced running bet. Washn. and Pgh. until Nov., from
1433 which time it has been running between Washn., Buffalo & Rochester. Sent to Altoona 1877 (Oct.), to be condemned. See D. N. W., 10 | 25 | 78.

Car 115.

This car was built by Harlan & Hollingsworth. Delivered Oct. 20th, 1869. A silver palace car. Assigned to Penna. R. R. and commenced service in their through line. Was shopped at Altoona Jan. 14th to Feb. 9th, 1871, for repairs on a | c accident on P. R. R. It remained in the Penna. R. R. through lines until June 10th, 1871, when it ran bet. St. Louis and Columbus during the month of June, when it again run bet. N. York and Cinti. Was shopped at Altoona Aug. 20th to Dec. 3rd, 1871, painting, &c., and run bet. N. Y. and Cinti. and Louisville until June, 1872, when it commenced running bet. N. York, Oil City and Erie, where it remained until Oct., 1873, with the exception of some few trips in the

through lines. Shopped at Phila. (nominally) June 26th to Mch. 12th, 1874, when it was shopped Altoona, gen'l reprs. Destroyed by fire at Pittsburgh at the great R. R. riot July 22d, '77. Settled for Feb. 6th, '80.

Car 116.

This car was built by Bolton, D. & Co. for the Southern Transptn. Co. as car "2" July 10th, 1866.

Bought by the C. T. Co. Oct. 1st, 1869. It was running on the Lima line bet. Cinti. and Chicago previous to the completion of 106 and 107. Transfd. to the Marietta and Cinti. R. R., when it was condemned in 1871.

1434 Car 117.

This car was built by Bolton, D. & Co. in 1866 for the Southern Transptn. Co. as No. 14. Bought Oct. 1st, 1869, by the C. T. Co. Was in the Lima line with No. 116.

Shopped at Harlan & Hollingsworth's in Oct., 1869, with 100 to be remodeled. Came out a 10-sec. silver palace car Feb'y 1st, 1870, and assigned to the Louisville, Cinti. and Lexington R. R. Was shopped at L'ville Mch. 30th, 1872, to June 1st, 1872, for gen'l reprs.

It remained running on this road until Oct. 21st, 1873, when it was condemned and is now lying at Louisville.

Car 118.

This car was built by Bolton, D. & Co. for Southern Transptn. Co. as car 11, delivered July 7th, 1866, bought Oct. 1st, 1869, by the C. T. Co. and kept on the Penn. R. R. Cut up in West Phila. yards June 22nd, 1870.

Value of car Cr. P. P. Car Co. on as in settlement made in Dec., 1870, at Altoona.

Car 119.

This car was built by Harlan & H. Delivered Nov. 23rd, 1869. A silver palace car. Assigned to Penna. R. R. Commenced service in the through lines. When first out this car was called "120." The No. was changed after the lease to P. P. Car Co. Shopped at Altoona, August 5th, to Dec. 16th, 1871, for varnish, &c. It
1435 remained in the Pa. R. R. lines until June, 1872, when it commenced running bet. N. Y., Oil City and Erie. Shopped at Phila. July 14th to Aug. 2nd, 1873, for varnish, &c. It remained in this line until Oct., 1873, with the exception of some few trips in the Pa. through line, when it again ran in the through lines until Mch. 24th, 1874, when it was shopped at Phila. (nominally), until Mch. 9th, '75, when it was taken in shop for gen'l reprs. Out July 12, 1875, painted.

1436 THE CENTRAL TRANSPORTATION COMPANY
vs.
PULLMAN'S PALACE CAR COMPANY.

FRIDAY, *March 22d*, 1895—10 a. m.

Present: The master (Mr. Etting); Mr. Prichard, of counsel for complainants; and Messrs. Wintersteen, Isham, and Lincoln, of counsel for defendants.

A recess was here taken to 1 p. m.

1 P. M.

Present: The master (Mr. Etting); Messrs. Prichard and Johnson, for complainants; Messrs. Wintersteen, Isham and Lincoln, for defendants.

DOLPHUS TORREY, recalled:—

By Mr. ISHAM:

Q. You have already been sworn in this case, have you not?

A. I have.

Q. On page 190 of the printed copy of your testimony, taken by the Central Transportation Company, under the cross-bill, occurs the following:—

"Q. Do I understand you to say that you knew personally in that period, say on January 1st, 1870, what material was on hand owned by the Central Transportation Company?

"A. I know more about it than any other living person,
1437 for this reason: When I entered the service of the company there was no record of its cars in the way of a historical sketch in regard to the shops—where they were built, where they had been remodeled, where they had been operated, or anything else. I compiled that record, which made me familiar with the circumstances in that direction. I furthermore took blank inventories of the equipment such as was used for taking the stock of a car, and I had taken the invoice of all the details and material in every car, in every stock-room, in every shop, or place where the company had any. I had these papers bound substantially together, and transmitted them to the office of the Pullman Company in Chicago.

"Q. When was that?

"A. In 1870."

At the bottom of page 191, continuing to page 192, occurs the following:—

"Q. You never made any itemized list of values of the specific items of material, and footed up the totals—the total values at $1,100,000, did you?

"No, sir. As I said to you, I estimated these cars in a rough way, and the small equipment lying around in the way of everything, from spittoons, brooms, brushes, blankets, pillows, and mattresses, and all that kind of detail, appeared in the inventory of the whole equipment of the division, which is in the hands of the Pullman Car Company."

Q. I will ask you to look now at the document which I hand you, which is entitled "Inventories of the equipment in cars and stock-rooms of the Central Transportation Company, December
1438 31st, 1869," marked by the master, "March 22nd, 1895, T. M. E., No. 1," and state whether that is the inventory of equipment referred to in the portion of your testimony which I have just read to you?

A. It is.

Q. Attached to it is a letter, signed by you, and addressed to whom?

A. It is not addressed to any one. The letter of advice which is attached to the document contains the title of the papers, a memorandum of the circumstances of the compilation, and my statement of opinion as to its accuracy.

Q. Is that the letter of transmittal of that document to the Pullman Company?

A. I believe it is.

Q. To whom did you transmit that document?

A. It was transmitted to the general superintendent. That is not indicated on it; but, as a fact, from the methods of procedure and memory of the circumstances, such was undoubtedly the case.

Q. Where was the office of the general superintendent—where was he located?

A. At Chicago.

Q. State the circumstances under which that inventory came to be made.

A. I believe I have already stated that in my previous testimony. I will repeat in as nearly the same language as I can. My previous business experience had educated me to the importance which might be attached to an accurate knowledge of the property at the time the transfer was made.

Q. When were the inventories contained in that document made?

1439 A. They were made very soon after the Pullman Company took possession of the property, which was, as I remember, in the latter part of February, 1870, or some time in February, 1870, dating back as of January 1st, 1870.

Q. On page 199 of your printed testimony above referred to occurs the following:

"Q. Do you know if there was a last account of stock taken by the Central Transportation Company before it went into the hands of the Pullman Company—a periodical account of stock for the purpose of showing the financial state of the company?

"A. You mean the operating material and equipment?

"Q. Yes; all their property.

"A. It was never done until I did it, I don't think.

"Q. When did you do it?

"A. I did it about the time of the transfer, and forwarded the papers to Chicago. I don't think it was ever done before."

Q. Is that the inventory referred to in that statement?

A. That is a transcript of the records, made up and forwarded to Chicago, referred to in that testimony.

Q. Your statement is that those inventories were made about the time of the transfer of the property to the Pullman Company. I observe that the letter of transmittal bears date December 31st, 1873. Will you explain that?

A. The date of the letter is December 10th. I have a recollection of this package being prepared for the general superintendent's office, or being intended for the general superintendent's
1440 office, lying in my desk in Pittsburgh, and for some reason, which I do not now recall, it was not forwarded promptly at the time, probably growing out of the question of having the estimates of values which are placed in there. My office was moved from Pittsburgh probably in December, 1873, and I presume that in closing up the records and papers at that time I was spurred to the action of sending it in at that particular time.

Q. That transcript appears to have been made upon blanks of the Pullman Company. Can you explain that?

A. That form of blank had been originated by me, I think, in 1869 in the Central Transportation Company. A small edition of the blanks at that time for use for a month or two at a time were printed, and after the lease to the Pullman Company all the blanks were printed with the Pullman title. It was not a Pullman blank in the nature of Pullman services otherwise than in the Central division. The items that it embraces are items that were not used in their invoices outside of the Central division.

Q. That was your division?

A. Yes. There is no doubt whatever that an accumulation of papers coming from the various assistant superintendents, with the invoices, would have been more or less mussed and soiled, and there were clean transcripts made of them for transmission.

Q. There are certain figures indicating the value of the items contained in that inventory. Explain how those valuations were made, by whom, and under what circumstances?

A. They were made at my request in co-operation with Mr. Robert Hays.

Q. Who was he?

1441 A. Mr. Robert Hays had been assistant superintendent at West Philadelphia of the Central Transportation Company, and continued in that duty until he was succeeded by Mr. E. H. Goodman. At the time Mr. Goodman became more specifically assistant superintendent at West Philadelphia the attention of Mr. Hays was given wholly to looking after the repairing of cars—shop work.

Q. What acquaintance with this property, and what basis of judgment as to its value, had Mr. Hays?

A. He had the most complete knowledge. As a subordinate to Mr. Jonah Woodruff and to myself, he was the agency through whom the purchasing was mainly done. He was the agency through whom old material might be sold, if any was disposed of, and in that

way he had a direct and personal knowledge which made his services in the matter of high value.

Q. Do you know what became of Mr. Hays—how long did he continue in the service?

A. He continued in the service until after I left it, which was in May or June, 1875. He continued there, say a year longer—perhaps a shorter time, and perhaps longer; I cannot say exactly. He left the Pullman service and entered the service of the Woodruff Sleeping Car Company, and as an officer of that company was accidentally killed in the railroad yard at Cleveland, Ohio.

Q. Do you know at about what date?

A. I cannot answer that question. It was many years ago. It was in the seventies.

Q. Were those valuations made by Mr. Hays under your direction and with your concurrence?

A. They were.

1442 Q. How long had he been in the service of the Central Transportation Company?

A. I don't know, but a number of years before I was.

Q. Were you also familiar with this property?

A. Yes, sir.

Q. What is your judgment as to the correctness of the valuations put upon the property by yourself and Mr. Hays at that time?

A. I recollect that at the time we deemed them as accurate and correct as it was possible for anybody to establish such matters.

Q. In your judgment, that inventory included all the equipment of the Central Transportation Company that was transferred to the Pullman Company at the time, under and in connection with the lease which was made?

A. I believe it was very full and very accurate. It was intended to be, and I have never had any reason to doubt it.

(Mr. Isham offers said inventory in evidence.)

(The items of the inventory have already been printed as Exhibit C (page 66) to the answer to the cross-bill in this cause, and the following is inserted not as a copy of the inventory, but only as a summary of the valuation of the items of equipment for each locality or car, as indicated in the inventory.)

Central Transportation Company.

Abstract of Superintendent D. Torrey's Inventory of Equipment in Cars and Stock-rooms, December 31st, 1869.

Stock-room, Philadelphia and Baltimore districts	$4,877 70
Store-room and laundry, Pittsburgh district	3,338 80
Store-room, Jersey City district	25 05
1443 Laundry, Cincinnati district	653 50
Store-room, Indianapolis district	78 60
Store-room and laundry, Chicago district	1,431 35
Car No. 1	623 65
2	725 05

	3	$517 30
	4	448 60
	5	1,089 90
	6	913 85
	7	488 00
	8	464 80
	9	576 65
	10	440 20
	11	575 80
	12	831 40
	13	767 70
	14	800 73
	15	469 80
	16	444 20
	17	
	18	425 05
	19	
	20	476 50
	21	445 80
	22	407 50
	23	
	24	451 00
	25	515 85
	26	524 45
	27	
	28	495 25
	29	767 70
	30	505 30
	31	456 80
	32	423 95
	33	454 25
	34	
	35	724 60
	36	825 55
	37	549 65
	38	811 80
1444	39	570 40
	40	562 30
	41	456 30
	42	733 50
	43	484 45
	44	496 60
	45	473 60
	46	448 50
	47	478 85
	48	453 75
	49	467 00
	50	463 00
	51	515 75
	52	511 40
	53	489 70

	54	
	55	$840 59
	56	430 70
	57	401 53
	58	475 55
	59	460 10
	60	516 25
	61	466 80
	62	371 70
	63	476 75
	64	
	65	
	66	437 40
	67	842 80
	68	475 10
	69	1,030 75
	70	1,000 75
	71	692 80
	72	1,005 60
	73	517 00
	74	
	75	1,116 65
	76	1,205 70
	77	955 95
	78	665 05
	79	331 50
1445	80	800 10
	81	528 70
	82	763 30
	83	854 50
	84	872 60
	85	1,269 60
	86	1,262 35
	87	1,018 75
	88	1,022 00
	89	1,038 90
	90	1,031 20
	91	1,039 15
	92	1,030 45
	93	1,023 95
	94	1,247 25
	95	1,068 00
	96	1,258 35
	97	1,379 35
	98	
	99	486 25
	100	
	101	448 40
	102	460 80
	103	1,022 05
	104	1,250 65

105	$1,246 35
106	714 25
107	739 50
108	1,298 15
109	1,312 30
110	1,194 80
111	1,077 50
112	1,051 05
113	1,046 95
114	1,270 30
115	1,265 15
116	441 55
117	
118	501 15
120 or 119	1,305 40
	$88,807 80

1446 Q. I now call your attention to the fact that in that inventory, where it gives schedules of equipment in separate cars, some numbers of the cars are omitted. They are consecutive, but there are some cars that are not included. For example, there is equipment in car 18 and in car 20, but no equipment noted in car 19 nor in car No. 17. There are also a number of other omissions of that character; for instance, car 23, and quite a number of others. Can you explain what that arose from?

A. That arose from the circumstance that the number for which there is no equipment given may be for a car which had been wrecked—that is, which was no longer in existence as a car for operation; or if the car was in existence, it had been run to the shop, stripped of its equipment which was not to be used in it again, and that equipment had been merged into the stock or store-room at that location, and would be indistinguishable in the mass of material given as stock at any particular store-room.

Cross-examination.

By Mr. JOHNSON:

Q. By equipment, of course you mean the equipment of cars, and not the cars themselves as equipped?

A. No; I mean the material which goes into their equipment. It is a well-defined distinction. The equipment of a road and the equipment of a car are two different things.

Redirect examination.

By Mr. ISHAM:

Q. In your testimony to which I have referred in the printed copy at the bottom of page 197 occurs the following:—

1447 "Q. We have the value of $200,000; now we have to get up some value on the other items in order to make up the $1,100,000.

A. I make it in this way, did then, and probably always would; that an opportunity to make money, an opportunity offered capital for investment, the opportunity is worth that which the capital can earn over and above its legal interest—current interest. If the capital can be had for eight per cent., and the opportunity gives it a chance to earn sixteen per cent., then the opportunity is worth just as much as the capital, and on that basis you would find still higher values."

Q. Referring to the subject of what is known in your testimony as intangible property, transferred by the Central Transportation Company to the Pullman Company, and indicated in this passage which I have just read, what would you say of the relative value to the Pullman Company and to the Central Transportation Company of what was transferred or assumed to be transferred with the assignment of these various contracts, patents, &c., having in view the fact that the Pullman Company was operating other connecting lines running out from Chicago in various directions—whether what was so transferred would be of more or less value to the Pullman Company relatively to its value to the Central Transportation Company or to any other party?

(Objected to, as not being a question within the line of testimony authorized by the order of the court.)

A. I think the value would be greater to the Pullman Company than it would have been to the Central Transportation Com-
1448 pany. I could not make any estimate in figures in a matter of that kind. It would be a general conclusion.

(Mr. Lincoln offers in evidence document entitled "Articles of agreement, made the first day of July, in the year 1863, between Theodore T. Woodruff, Orville W. Childs, and George R. Dykeman, parties of the first part, Edward C. Knight, William C. Stevenson, and William A. Brown, parties of the second part, and the Central Transportation Company, party of the third part," purporting to transfer certain interests in patent rights mentioned in the instrument.

Mr. Lincoln states that this is offered to show the title, estate, or interest acquired by the Central Transportation Company in the patents mentioned in the instrument.

Objected to, because there is no question raised concerning the point in proof of which the paper is offered. No question is raised, however, as to the actual execution of the paper. The Pullman Company is to be taken as being in the same position as it would have been in if it had offered formal proof.

Said paper marked for identification, "No. 2, March 22nd, 1895, T. M. E.,")

Articles of agreement, made this first day of July, in the year of our Lord one thousand eight hundred and sixty-three (1863), between Theodore T. Woodruff, Orville W. Childs and George R. Dykeman, copartners under the firm of T. T. Woodruff & Co., all of the city of Philadelphia and State of Pennsylvania, of the first

part; Edward C. Knight, William C. Stevenson and William A. Brown, all of the said city, of the second part, and the Central Transportation Company (a company incorporated December thirtieth, anno Domini, 1862, under the provisions of an act of assembly of the Commonwealth of Pennsylvania of the seventh
1449 of April, A. D., 1849 and the supplements thereto and having their principal office in the city of Philadelphia) of the third part.

Whereas, the said parties of the first part own and control certain patent rights for improvements in convertible seats and couches for railroad cars, secured by the several letters patent mentioned in the following schedule thereof, viz:

No.	Name.	Number.	Date.	Reissue.	New No.
1	T. T. Woodruff.....	16159	Dec. 2, 1856	Mar. 17, 1863	1439
2	" "	16160	" "		
3	" "	24257	May 31, 1859		
4	" "	26942	Jan. 24, 1860		
5	Eli Wheeler	21099	Aug. 13, 1858	Sept. 18, 1860	1043
6	" "	25499	Sept. 20, 1859		

And whereas, the said parties of the second part, under the name of E. C. Knight, now own and control certain other patent rights for improvements in convertible seats and couches in railroad cars, secured by the several letters patent mentioned in the following schedules thereof, to wit:

No.	Name.	Number.	Date.	Reissue.	New No.
1	H. B. Myer.....	11699	Sept. 19, 1854	May 3, 1859	711
2	" "	11699	" "	Oct. 8, 1861	123
3	E. C. Knight.....	24563	June 28, 1859		
4	" "	25570	Sept. 27, 1859		
5	" "	27297	Feb. 28, 1860		
6	W. A. Brown.....	29137	July 17, 1860		
7	" "	33979	Dec. 24, 1861		

And whereas, the said party of the third part is desirous of hereafter owning and controlling all of said letters patent and the rights thereunder and thereby secured.

Now this agreement witnesseth, that for and in consideration as well of the payment hereinafter mentioned to be made by the said party of the third part to the said parties of the first and second parts as of the sum of one dollar by the said party of the third part to each of the said parties of the first and second parts at the time of the execution and delivery hereof paid, the receipt whereof is hereby acknowledged, the said parties of the first part and the said parties of the second part, each party for themselves respect-
1450 ively do hereby assign, sell and transfer to the said, The Central Transportation Company, the party of the third part hereto,

all the right, title and interest of them the said parties of the first and second parts hereto in to and under each and every of the hereinbefore-recited letters patent and the inventions, improvements and rights thereby secured; together with all and every the renewals reissues and extensions thereof made or which hereafter may be made; so that the said party of the third part shall exclusively own and control the whole of the said patents with all extensions and renewals thereof and all the inventions, improvements, rights and privileges thereunder or thereby secured: Upon however and expressly subject to the following reservations and conditions, to wit:

First. The said parties of the first and second parts do hereby expressly reserve to themselves the right to collect or sue for damages for all past infringements upon any or either of the said patent rights except against the said party of the third part and such railroad companies as they the said party of the third part may now have contracts with, but no suit or action shall be instituted against any railroad company by the parties of the first and second parts nor shall any demand be made for damages for infringements of either of the said letters patent until the expiration of twelve months from the date of this agreement without the written consent of the party of the third part. The said parties of the first and second parts hereby each respectively assigning and transferring to the other respectively an undivided interest of one moiety or half part of all such claims for infringements upon any or either of said patents which either of them may have respectively, so that any money or receipts of any kind hereafter derived or to be derived from any such claims by suit or otherwise shall be divided equally between said parties of the first and second parts.

Second. The said parties of the first and second parts do hereby and herein severally and jointly further reserve from this sale and transfer of the several letters patent, the rights under the several letters patent for all territory covered by the following-named
1451 railroads, viz: Erie and branches; Hudson River; Lake Shore from Buffalo to Cleveland; Toledo, Norfolk & Cleveland; Michigan Southern and Northern Indiana & Branch; Michigan Central; Terre Haute, Alton & St. Louis; and Hannibal and St. Joseph railroads. The rights for the said territory herein reserved having been heretofore contracted to other parties by the parties of the first part under and by virtue of the letters patent herein transferred to the party of the third part by the parties of the first part and that the contracts heretofore made conveying the right for the territory herein reserved shall be and the same are as valid as if made under and by virtue of all of the said letters patent herein transferred by the parties of the first and second parts to the party of the third part, including also the territory covered by the Virginia and Tennessee railroad, the same having been heretofore contracted to other parties by the said parties of the second part, and a still further reservation for the right only under and by virtue of the letters patent granted to E. C. Knight one of the parties of the second part to the use of two cars on the Indiana Central and two cars on the Philadelphia, Wilmington and Baltimore railroad.

The reservation for the right to the use of cars on the Indiana Central and the Philadelphia, Wilmington and Baltimore railroad is not intended to be protected by any of the said letters patent except the patents granted to E. C. Knight, nor are the rights under the said letters patent other than those granted to E. C. Knight reserved for the territory covered by *by* the last two named railroads in this sale and transfer of said letters patent. All profits hereafter derived or to be derived from said contracts are to be divided equally between them the said parties of the first and second parts hereto. But if at any time hereafter any or either of said contracts shall be cancelled or in any way annulled or should cease to exist then the rights covering so much of said excepted territory as was included in such cancelled or annulled contracts are to accrue to and vest in the said party of the third part and be subject to the same conditions as fully as if this reservation had not been made.

Third. In consideration of the transfer of said letters patent
1452 as hereinbefore made, the said party of the third part hereby covenants, promises and agrees to and with the said parties of the first and second parts respectively, that they the said party of the third part will pay to the said parties of the first and second parts twenty per cent. of the gross earnings derived from the running or use of cars, less the current expense of conducting the business and maintaining the organization of the said party of the third part, but any monies expended in obtaining or endeavoring to obtain the right or privilege to run cars or for purchasing or building cars and equipping the same and all repairs (except the cost of repairs to seats and couches) shall not be chargeable to current expenses and said costs of repairs to seats and couches shall only be chargeable to current expenses when they are obliged to be paid by the said party of the third part: The said party of the third part reserving and excepting however out of the said twenty per cent. the sum of two hundred dollars per month or twenty-four hundred dollars per annum, which said sum of two hundred dollars per month is to be paid by the said party of the third part monthly and every month unto Albert J. Myer and William Whiting jointly or order in pursuance of a certain agreement made by and between the said parties of the second part and the said Myer and Whiting dated October eighth, 1862, the said twenty per cent. less the two hundred dollar per month (payable to Myer and Whiting) to be paid monthly and every month to said parties of the first and second parts during the entire legal existence of the said party of the third part, say for twenty years from date of incorporation of the said party of the third part. The one-half thereof to be paid to T. T. Woodruff & Co. and the other half thereof to be paid to E. C. Knight or their respective legal representatives, but if from any cause the said payment of two hundred dollars per month payable to the said Myer and Whiting shall cease to be payable, then the same shall cease to be deducted from the said twenty per cent. due the parties of the first and second parts.

Fourth. Upon such lines of railroad as the said party of the third
part shall neglect or fail to equip with cars and run the same
1453 for the space of twelve months after the date of any applica-

tion made to them for cars, they the said party of the third part bind themselves to issue licenses under the several letters patent for the use of patents upon such terms for license fees as the said parties of the first and second parts shall jointly agree to and authorize, all of which fees for licenses or receipts derived from running cars on any such rail road or roads as the said party of the third part may have failed to furnish as aforesaid, shall belong to said parties of the first and second parts, to be equally divided between them and by them among their associates.

Fifth. All obligations of either parties of the first and second parts to former owners of any of the said letters patent, except the two hundred dollars per month payable to Myer and Whiting hereinbefore mentioned, shall be paid by them respectively each their own, and all obligations of the said party of the third part under this agreement to the said parties of the first and second parts shall be binding during the entire legal existence of the said party of the third part, say for twenty years from the date of their incorporation as aforesaid, whether said letters patent or either of them may or may not have expired.

Sixth. The said party of the third part bind themselves to cause to be kept in the city of Philadelphia full proper and correct books of account wherein shall be set down all the receipts and expenditures of said company, to which books the said parties of the first and second parts or their duly authorized agents or agent shall have access at all reasonable times, and once in each and every month they the said party of the third part shall furnish to the said parties of the first and second parts each a statement of all receipts and expenditures during the month, duly certified by the president and secretary of said company and shall pay over to said parties of the first and second parts in cash the respective amounts due them as hereinbefore specified.

Seventh. The said parties of the first and second parts do hereby respectively covenant and agree each with the other of them that it is the true intent and meaning of this agreement that the
1454 entire interest of the said parties in all said patents shall be hereby consolidated and combined so that they the said parties of the first and second parts shall be jointly and equally interested therein (subject however to this transfer to said party of the third part) and that at all times hereafter all profits of every kind which may be derived by said parties of the first and second parts from the said patents in any way or by any means whatever shall be equally divided between them, share and share alike, and that all past difference between them whether on account of alleged infringements or otherwise howsoever, shall be considered to be hereby finally settled upon the basis of one-half interest by each of said parties and that this mutuality of interest shall continue for and during the entire term for which any or either of said patents or any renewals, reissues or extensions thereof may have been or may hereafter be issued, and all contracts or arrangements heretofore made by either of said parties respectively and all suits for infringements shall hereafter inure equally to the benefit of said parties of

the first and second parts and neither party shall have any claim against the other for or on account of past alleged infringements or otherwise howsoever. It being understood and agreed that the said parties of the first and second parts shall respectively hold and enjoy each for themselves all the benefit and immunities for past use of said patents arising out of the contracts hereinbfeore named and guarantees heretofore made respectively by them for and during the whole time preceding the date of this instrument.

Eighth. It is hereby expressly understood and agreed that this agreement confers upon the said party of the third part no right whatever to sell, assign or transfer the said letters patent or any or either of them or the renewals, reissues or extensions thereof or the rights under them to any person or persons whomsoever, but that it is the true intent and meaning hereof that the said party of the third part shall only for themselves have the right to manufacture convertible seats and couches for railroad cars with the improvements secured by said letters patents, and run cars furnished with the same, under all 6r any or either of said patents, which
1455 have been hereby assigned and shall not under any circumstances have the right to sell or transfer the said right to any other person or persons whomsoever, without having first obtained for that purpose the written consent of the parties of the first and second parts hereto.

In witness whereof, the said parties of the first and second parts have hereunto set their respective hands and seals, and the said party of the third part the hand of their president and the common seal of their said corporation, the day and year first hereinbefore written.

T. T. WOODRUFF. [SEAL.]
O. W. CHILDS. [SEAL.]
G. R. DYKEMAN. [SEAL.]
E. C. KNIGHT. [SEAL.]
WM. C. STEVENSON. [SEAL.]
WM. A. BROWN. [SEAL.]
O. W. CHILDS, *President, &c.*

[SEAL.]

July 18, 1863. U. S.
O. W. C.
T. T. W.
G. R. D.
E. C. K.
W. C. S.
W. A. B.
O. W. C., Pres.
40 cts. Internal revenue.
Int. rev.

U. S.
5 cents.
O. W. C.
T. T. W. W. C. S.
G. R. D. W. A. B.
E. C. K. O. W. C., Pres.
Int. rev.

U. S.
5 cents.
Int. rev.
O. W. C. W. A. B.
T. T. W. O. W. C., Pres.
G. R. D.
E. C. K.
W. C. S.

Sealed and delivered in the presence of us—

NOTE.—The word "entire" in the 2nd line from the bottom of 5th page being first written on an erasure and the word "equally" in the 9th line of 3rd page being first interlined (in 9th line from bottom) and the words "shall not be" in the 6th line from top of 6th page being first stricken out and the words "shall cease to be payable" in the 7th line of same page being first interlined.

C. M. HUSBANDS.
J. KNIGHT.
JACOB R. MASSEY.

On this eighteenth day of July, A. D. 1863, before me the subscriber an alderman of the city of Philadelphia, personally appeared the above-named Theodore T. Woodruff, Orville W. Childs, George R. Dykeman, Edward C. Knight, William C. Stevenson and William A. Brown and in due form of law acknowledged the above and foregoing agreement or instrument of writing to be their and each of their act and deed and desired the same as such might be recorded.

Witness my hand and seal the day and year aforesaid.

[SEAL.] JACOB R. MASSEY, *Alderman.*

1456 CITY OF PHILADELPHIA, *ss:*

Be it remembered that on this eighteenth day of July, A. D. 1863 before me the subscriber an alderman of the city of Philadelphia, personally appeared Orville W. Childs, president of the above-named corporation and being duly sworn deposeth and saith that he was personally present at the execution of the foregoing written agreement and saw the common seal of the said corporation the Central Transportation Company duly affixed thereto and that the seal so affixed thereto is the common and corporate seal of the said The Central Transportation Company, and that the said agreement was duly sealed and delivered by and as and for the act and deed of the said corporation for the uses and purposes therein mentioned in pursuance of resolutions passed by the board of directors thereof at a meeting held on the fifteenth day of July instant, and that the name of this deponent subscribed to said agreement as president of said corporation in attestation of the due execution and delivery thereof is of this deponent's own proper handwriting.

O. W. CHILDS, *President.*

Sworn and subscribed the day and year aforesaid before me.

Witness my hand and seal.

[SEAL.] JACOB R. MASSEY, *Alderman.*

U. S. PATENT OFFICE.

Received Aug. 20th and recorded Aug. 25th, 1863, in Liber X 6 page 325 of Tranfers of Patents.

In testimony whereof, I have caused the seal of the Patent Office to be hereunto affixed.

D. P. HOLLOWAY,
Com'r of Patents.

[SEAL.] J. S. S.

(Counsel for the Pullman Palace Car Company offer in evidence the original lease from the Central Transportation Company
1457 to the Pullman Palace Car Company, dated the seventeenth day of February, 1870, and request the master to mark the same for identification; the said original document offered in evidence consisting of the lease and certain exhibits therein specified.

Counsel for the Pullman Palace Car Company also offer in evidence the original articles of agreement between the Central Trans-

portion Company and the Terre Haute and Indianapolis Railroad Company, dated Philadephia, the first day of September, A. D. 1868, and request the master to mark the same as an exhibit.)

The original lease is marked "Exhibit No. 3, March 22nd, 1895, T. M. E., master."

The original articles of agreement, marked "Exhibit No. 4, March 22nd, 1895, T. M. E., master."

The following are copies of only the exhibits specified in and attached to the lease. The words here printed in italics in article sixth of the exhibit purporting to show the Terre Haute and Indianapolis Railroad contract are words which in the original (for which was used a contract form in print) have a pen and ink line drawn through them.

A copy of the original articles of agreement with the Terre Haute and Indianapolis Railroad Company is not here printed because it is identical in form with the above-mentioned original exhibit purporting to show it.

1458 EXHIBIT A.

First. Contracts of the Central Transportation Company, December 31, 1869.

T. T. Woodruff, G. R. Dykeman, both of Alton, Illinois; John S. Miller, of Litchfield, Illinois; and O. W. Childs, of Syracuse, New York, trading under the firm of T. T. Woodruff & Co., owner of Woodruff's patent for seats and couches for railroad cars, for themselves, their associates and assigns, by their duly authorized agent, T. T. Woodruff, do hereby propose to the Pennsylvania Railroad Company, to put and run upon their road between Philadelphia and Pittsburgh, or such other points as said Pennsylvania Railroad Company may desire, sleeping cars with said patent seats and couches, upon the following terms and conditions, to wit:

First. No charge to be made to the Pennsylvania Railroad Company for the use of cars, but said company to keep them in proper running order and good condition, including renewal of wheels and axles and to repair all damages they may sustain (ordinary wear and tear excepted) except that Woodruff & Co., shall keep the upholstery and inside of the cars in first-class condition and repair at their own expense. The Pennsylvania Railroad Company to furnish fuel and lights. Cars to be subject to the approval of the general car-inspector of the Pennsylvania Railroad Company as to safety and equipments.

Second. Woodruff & Co. to be entitled to charge and receive from such passengers as shall choose to occupy the couches, a reasonable compensation for the same not exceeding fifty cents (50 cts.) for each person or couch occupied, which charge shall entitle the party to the seat during the trip. Further, the charge shall not be greater than the usual price charged upon other roads for similar accommodations, and especially not greater than on competing lines.

Third. The Pennsylvania Railroad Company to have the right

to seat any of the regular first-class passengers in any of the seats of the sleeping cars not required to be used as couches; but
1459 it is only intended by this provision, to secure the carrying in the sleeping cars an equal number of passengers to the average number carried in the other first-class passenger cars of the train. Regulations shall hereafter be agreed upon as will give such discretion in the admission of passengers to the sleeping cars as will favor the renting of the couches, and such regulations as may be necessary to preserve the reputation of sleeping cars by excluding improper persons from using them.

Fourth. The Pennsylvania Railroad Company to carry, free, two attendants or persons in charge of each sleeping car on the part of Woodruff & Company for the purpose of renting the couches and keeping the car in order, and also to carry free the person having the general oversight of said business when necessarily passing over said road on business relating to the running of sleeping cars thereon, all of which shall be considered as employees of the Pennsylvania Railroad Company while traveling on the road, and the said company shall not be held responsible for personal injuries that may occur.

Fifth. Messrs. Woodruff & Co. shall put on the road not less than one car for each night train by the first day of January next, and as much earlier as practicable; they shall put on additional cars as the business of the road shall, in the opinion of the general superintendent, require.

Sixth. Woodruff & Co. shall employ on said sleeping cars no person but such as shall conduct themselves with decorum and propriety, and none but such as shall be approved by the general superintendent of the company and will be subject to removal at his option.

Seventh. All the improvements which the patentee of said seats and couches has made, or shall hereafter make, and all useful inventions and improvements which shall be made in sleeping cars, shall be promptly introduced by Woodruff & Co. upon the sleeping cars of this road, so far as the same shall conduce to the safety or comfort of passengers or tend to increase the passenger traffic of the road, and their compliance with this provision shall give them the exclusive right of running sleeping cars on said road during the continuance of said patent, unless this contract
1460 should be terminated by notice herein provided. But if the Pennsylvania Railroad Company shall at any time deem it their interest, from the want of sufficient patronage, or from any other cause, to discontinue the running of sleeping cars, they may, by giving three months' previous notice, require such discontinuance. But such notice shall not be given until one year after the cars shall commence running. Woodruff & Co. may, on a like notice, cease running said cars.

Eighth. The regulations as to the persons to be admitted into the sleeping cars, and as to the occupation of seats when not required for sleeping, and all other proper rules and regulations for the government of said sleeping cars, shall be subject to the approval of

the general superintendent of the said road, and it is expressly understood that all rules and regulations of said Pennsylvania Railroad Company shall be strictly observed and complied with on the part of said Woodruff & Co., and all persons in their service.

In witness whereof, we, the undersigned, have hereunto affixed our signatures, for and on behalf of, our respective companies, this fifteenth day of September, A. D. 1858, subject to the approval of the president of the Pennsylvania Railroad Company, and this contract shall not be binding until approved by his signature.

(Signed) THOMAS A. SCOTT,
Gen'l Sup't Penna. R. R. Co.

(Signed) T. T. WOODRUFF & CO.,
By T. T. WOODRUFF.

Approved.

(Signed) J. EDGAR THOMPSON,
President Pennsylvania R. R. Co.

Memorandum of an agreement made this thirtieth day of June, A. D., 1862, by and between T. T. Woodruff & Co., of Philadelphia, State of Pennsylvania, by their duly authorized attorney, T. T. Woodruff, and the Northern Central Railway Company by A. B.
1461 Warford, president, and J. N. Du Barry, superintendent of the said railway company, witnesseth:

That the said T. T. Woodruff & Co., for themselves, their heirs, executors, administrators, and assigns, for and in consideration of the benefit hereinafter reserved, do hereby agree to furnish to the said railway company, two sleeping cars, known as Woodruff's patent convertible seat and couch cars, said cars to be constructed of the best material, and in the most thorough and workmanlike manner, and equipped with all the latest improvements, and in every respect ready for use. The said cars to be delivered to the said railway company on or before the first day of October next. The said railway company agree to run the aforesaid sleeping cars in the night trains and in such manner as will best accommodate the passengers desiring couches in sleeping cars, and to furnish fuel for the stoves and oil for the lights for said cars, and to keep the said cars in running order and repair, including renewals of worn-out parts, all of which are to be at the expense of said railway company, except such as are hereinafter provided for. The said T. T. Woodruff & Co., are to keep the seats and couches and the upholstery and bedding clean and in perfect order and repair at their own expense, so far as usual wear and tear are concerned, and not otherwise. The said railway company are to take all risks of casualties incident to passengers and cars. The said T. T. Woodruff & Co. are to furnish at their own expense two employees upon each of the said cars, one to act as porter and the other to preserve order and collect couch fares, as is hereinafter provided for, both of whom shall be entitled to ride free when on duty, such employees to be treated as the employees of the said railway company and to be subject to the rules and regulations thereof. No charge to be made against the said railway company for the use of said cars, but the said cars are to

be treated in all respects as the cars of the said railway company during the continuance of this contract. But nothing in this agreement shall be construed as affecting the title of the said T. T. Woodruff & Co. to the said cars after the expiration of this contract.

1462 The said T. T. Woodruff & Co. are to have the entire control of the admission of passengers into the said sleeping cars except at such times when the admission of passengers may become necessary from an accident to one or more cars of the same train, or when such admission will not interfere or molest such passengers as may desire couches. The said T. T. Woodruff & Co. are to be entitled to collect fifty cents from each and every passenger who may, from choice, occupy a seat in said sleeping cars, or fifty cents for each couch occupied, which sum shall entitle such passenger to occupy such seat during such trips. Such rules and regulations shall be agreed upon as will favor the renting of the couches of the said cars.

The said T. T. Woodruff & Co. are to furnish additional cars upon the same terms as herein provided for, for the first two cars, whenever it shall be found that the said two cars are not sufficient to well and fully accommodate the passengers requiring couches in sleeping cars; they are also to promptly introduce any improvement which may be made in sleeping cars, so far as such improvements shall conduce to the safety and comfort of passengers, or tend to increase the travel of the said road.

The compliance with the provisions of this contract on the part of said T. T. Woodruff & Co. shall give them an exclusive right to furnish sleeping cars to the said railway company during the continuance of said Woodruff's patent.

It is further agreed, that this contract or agreement may be terminated and made void for want of sufficient patronage or the noncompliance by either party with the provisions of this contract, by six months' written notice being given to the opposite party by the party desiring to annul the agreement. But nothing in this contract shall be so construed as to give the said railway company the right to terminate and make void this contract for the substitution of other sleeping cars under any contract other than those constructed under the patent granted to T. T. Woodruff, at any time during the continuance of the said Woodruff's patent, without prejudice to the right of the said T. T. Woodruff & Co. to recover such damages as they may sustain or may have sustained.

1463 The person having the general oversight of the said sleeping cars shall be entitled to ride free when on business appertaining to the said sleeping cars.

It is expressly understood and agreed, that no charge is to be made against the said railway company by the said T. T. Woodruff & Co. for the past use of sleeping cars, nor is any charge to be made against the said T. T. Woodruff & Co. by the said railway company for tolls or any other expenses by reason of sleeping cars under the patents of T. T. Woodruff having been run on their railway previous to the date of this agreement.

It is further agreed, that no charge shall be made by either party to this agreement against the other, from the date of this agreement

until the two cars are placed upon the railway, as is hereinbefore provided for.

In testimony whereof, we have hereunto set our hands and seals the day and year above written.

(Signed) J. D. CAMERON, [L. S.]
Vice-Pres't N. C. R. W. Co.

(Signed) J. N. DU BARRY, [L. S.]
Superintendent.

(Signed) T. T. WOODRUFF & CO., [L. S.]
By T. T. WOODRUFF, *Attorney.*

Witness present at signing:
The words seats and couches:
(Signed) EDMUND L. DU BARRY.

This contract, between Edward C. Knight, William C. Stevenson, and William A. Brown, of Philadelphia, trading under the firm of E. C. Knight, and owners of Knight's patent for couches for railroad cars, for themselves, their associates and assigns, by their duly authorized agent, William C. Stevenson, do hereby propose to the Baltimore and Ohio Railroad Company to put and run
1464 on their road between Washington city, D. C., Baltimore, and Wheeling, and such other points on their road as the said railroad company may desire, sleeping cars, upon the following terms and conditions, viz:

First. No charge to be made to the Baltimore and Ohio Railroad Company for the use of the cars, but said company to keep them in proper running order and condition, including renewal of wheels and axles, and to repair all damages they may receive, (ordinary wear and tear excepted,) except that the said E. C. Knight shall keep the upholstery and inside of the cars in first-class condition and repair at his own expense. The Baltimore and Ohio Railroad Company to furnish lights and fuel, and give notice of the running of the cars in all their regular advertisements. Said cars to be subject to the approval of the master of machinery of the said railroad company, as to safety and equipments.

Second. The said E. C. Knight shall be entitled to charge and receive from such passengers as shall choose to occupy the couches, a reasonable compensation for the same, not exceeding fifty (50) cents for a single couch, and one (1) dollar for a double couch, which charge shall entitle the party to a seat during the trip, and which amount he shall collect through his agents; the said railroad company in nowise to be responsible for the same. The above rates of charges shall only be increased or diminished in keeping with the charges on competing roads furnishing equal accommodations and comfort.

Third. The said railroad company shall carry free, two attendants in charge of each sleeping car, on the part of E. C. Knight, for the purpose of renting the couches and keeping the cars in order, who shall strictly conform to all the rules of said railroad company, and conduct themselves with propriety and decorum, in default of

which they shall be subject to removal by the master of transportation. They shall also carry free of charge, the persons having the oversight of said business, or necessarily passing over said road on business relating to the running of sleeping cars thereon, all of whom shall be considered as employees of the said
1465 Baltimore and Ohio Railroad Company while traveling on said road, and said company shall not be held responsible for personal injuries they may receive. The said agents shall not travel free except they be furnished with a pass by said railroad company.

Fourth. The said E. C. Knight shall put on the road not less than one car for each night train within one month after said railroad company shall commence running their through trains from Washington city to Wheeling. He shall put on additional cars as the business of the road shall, in the opinion of the master of transportation, require. He shall be allowed to use such discretion in the admission of passengers to the sleeping cars as will favor the renting of the couches, and put in force such regulations as may be necessary to preserve the reputation of sleeping cars, by excluding improper persons from using them; all of which shall only be made with the approval of the master of transportation of said railroad company

Fifth. All the improvements which the patentee of said seats and couches has made, or shall hereafter make in the same, so far as they shall conduce to the comfort and safety of the passengers, or tend to increase the passenger traffic of the road, shall be promptly introduced by the said E. C. Knight in the sleeping cars on this road, and his compliance with this provision shall give him the exclusive right of running sleeping cars on the said Baltimore and Ohio railroad during the continuance of said patent, all the improvements which the said E. C. Knight shall introduce in his cars on any other road shall be promptly introduced on this road, if required.

Sixth. The said E. C. Knight, in consideration of the foregoing, hereby guarantees to defend the said Baltimore and Ohio Railroad Company against all suits for infringements, or alleged infringements, by reason of the running of the said sleeping cars, and to pay all damages arising therefrom during the continuance of said patent or contract.

In witness whereof, we, the undersigned, have hereunto
1466 affixed our signatures—E. C. Knight for himself, and the Baltimore and Ohio Railroad Company by their president, this twenty-second day of December, A. D. 1862.

(Signed) E. C. KNIGHT.

Witnesses to signature of E. C. Knight:
(Signed) CHAS. H. HARDING.
" LAMBERT R. WALKER.

(Signed) J. W. GARRETT, *President.*

Witnesses to signature of J. W. Garrett, pres't:
(Signed) L. M. COLE, *G. T. A.*

It is further agreed, that the said railroad company shall have the privilege of using any unoccupied seats in the sleeping cars with first-class passengers, when there shall not be sufficient room in the other first-class cars on the train, and that should the cars about to be introduced prove too heavy for the grades, then the said E. C. Knight will at once commence the building of other sleeping cars, better suited to the use of said road, the patented couches in which shall not increase the weight of said cars more than ten hundred pounds over that of an ordinary first-class passenger car of same capacity and dimensions, and should it become necessary to change the trucks now under the cars for those of the Baltimore and Ohio railroad, the said E. C. Knight agrees to pay a liberal compensation for the same.

In witness whereof, we, the undersigned, have hereunto affixed our signatures, E. C. Knight, for himself, the Baltimore and Ohio Railroad Company by their president, this fifth day of January, A. D. 1863.

(Signed) E. C. KNIGHT.
J. W. GARRETT, *President.*

Witnesses to signature of E. C. Knight and J. W. Garrett, president:

(Signed) L. M. COLE, *G. T. A.*

1467 For a valuable consideration to us paid by the Central Transportation Company, (a company incorporated under the act of assembly of Pennsylvania, of April 7th, 1849, and having its principal office at Philadelphia,) the receipt whereof is hereby acknowledged, we, Edward C. Knight, William C. Stevenson and William A. Brown, parties named in the foregoing contract do hereby assign, sell and transfer unto the said The Central Transportation Company, the foregoing and all our rights and privileges thereunder and all benefits to be derived therefrom, with all our right, title and interest therein, together, also, with four sleeping railroad cars, with their furniture and fixtures, furnished to the above-named The Baltimore and Ohio Railroad Company under said contract, now on said road and belonging to us and together with all earnings under said contract since June 1st, 1863.

Witness our hands and seals this first day of July, A. D. 1863.

(Signed) E. C. KNIGHT. [L. S.]
(Signed) WM. C. STEVENSON. [L. S.]
(Signed) WM. A. BROWN. [L. S.]

Sealed and delivered in presence of us:
(Signed) C. M. HUSBANDS.
J. KNIGHT.

Memorandum of agreement.—It is hereby agreed between the parties hereto that the Central Transportation Company "shall have the right to furnish and run all the sleeping cars between the cities of New York, Philadelphia, Baltimore and Washington on the entire line or any part thereof, for and during the term of ten years, from the date hereof, on the following terms and conditions," to wit:

First. The Central Transportation Company to furnish first-class sleeping cars sufficient to accommodate the wants of the travelling public, with all the modern conveniences, at their own cost and expense, and maintain all the upholstery, bedding and fixtures pertaining thereto for the sleeping accommodation of the travelling public.

1468 Second. The Central Transportation Company shall furnish a competent conductor and porter for each sleeping car that may be placed on the route, on any part of it, and who shall, while on duty, be carried free on the roads.

Third. In consideration of all the foregoing the other parties hereto agree that they will receive upon the lines and move promptly and regularly upon all of their night trains the cars so furnished, and to the extent and number that may be necessary to meet the wants of the public, and to provide all repair and renewals (except those pertaining to the upholstery and berths) that may be necessary to keep them in first-class condition. They (the railway companies) to take all risks of casualties, and furnish for said cars fuel and other supplies as they would do were other cars in lieu thereof owned and run by them respectively for the accommodation of first-class passenger traffic. It being fully understood that the several railway companies shall not be responsible to the Central Transportation Company for any compensation for injury to their employees, or to said employees for any injury to them in any form, or for the use of said cars, or for the capital invested therein, or in any other way except for the repairs, renewals and supplies as hereinbefore provided for.

Fourth. In consideration of all the foregoing, it is mutually agreed between the parties that the prices to be charged for the use of berths between the several points shall be fixed by the railway companies, not lower than the sum of one dollar ($1.00) for each single berth, and out of the sum so fixed the railway companies shall pay over to the Central Transportation Company fifty cents (50 cts.) for the use of each single berth sold or occupied, which shall be deemed and considered a full compensation to them, the said Central Transportation Company, for furnishing cars, bedding and other sleeping equipments, and all other expenses of operating said cars (including patent fees,) as provided in this contract, the balance of all receipts derived as above from the sale of the use or occupation of berths, shall be retained by the said railway companies.

Fifth. If hereafter, in the estimation of the parties hereto,

1469 the price of one dollar ($1.00) between New York and Philadelphia or between Philadelphia and Baltimore, is too high for a revenue basis, or the price between New York and Washington, is too low, then and in such case the price may be reduced or raised, and the same shall be equally divided between the railway companies and the said Central Transportation Company: settlement to be made at Philadelphia on or before the fifth of each month for the preceding month, at the office of the Philadelphia, Wilmington and Baltimore Railroad Company.

Sixth. The Knight's sleeping car now owned by the Philadel-

phia, Wilmington and Baltimore Railroad Company shall be paid for by the Central Transportation Company, to Philadelphia, Wilmington and Baltimore Railroad Company, at a fair valuation, with the unexpired patent fee on the same.

Seventh. This contract shall commence whenever the Central Transportation Company shall put on two of their first-class new sleeping cars in addition to the two "Knight's sleeping cars" now on the line between Philadelphia and Washington, before referred to. Hospitals cars for sick and wounded soldiers may be used by the railroad companies as now, without charge to soldiers. It is further understood and agreed between the parties to this agreement, that the railroad companies reserve the right to use as many reclining seats in cars as they think proper, either through or local. That the railroad companies have the power to say how many sleeping cars on a train shall be run, and on what trains they shall be placed.

Double berths to command double price. Sleeping cars to be subject to inspection of masters of machinery of the different roads.

Employees of Central Transportation Company to conform to rules and regulations of the different roads, and to be under the direction and control of the officers of the "through line." Central Transportation Company to exclude all improper persons from the sleeping cars. Central Transportation Company to defend the different roads who are parties to this agreement, against suits for in-
1470 fringement of patent, and to hold them harmless from the same, either in the past or future. The Central Transportation Company to allow first-class passengers to ride in cars during daytime when required by the different companies.

Each company to be uncontrolled in its local business or rates by the other companies.

Disagreements (in everything but prices of berths) to be submitted to two disinterested and experienced railroad men; one chosen by each party, and they to choose a third, whose decision in matters referred to them, shall be final

Philadelphia, April 12th, 1864.

For the CENTRAL TRANSPORTATION COMPANY,

(Signed) O. W. CHILDS, *President.* [L. S.]

Witness:
(Signed) THOS. K. WALKER.

For the BALTIMORE & OHIO RAILROAD CO.,

(Signed) J. W. GARRETT, *President.* [L. S.]

Witness:
(Signed) AND'W ANDERSON.

For the PHILA., WILMINGTON & BALTIMORE RAILROAD COMPANY,

(Signed) By S. M. FELTON, *President.* [L. S.]

Witness:
(Signed) GEO. E. BENT, S. M. F.

Articles of agreement, made and entered into this first day of May, 1862, by and between the Pittsburgh, Fort Wayne and Chicago Railway Company of the one part, and T. T. Woodruff, G. R. Dykeman and O. W. Childs, partners, doing business under the name and style of T. T. Woodruff & Co. of the other part. It is hereby agreed by and between the parties that the said T. T. Woodruff
1471 & Co. shall put and run upon the road of the said railway company, sleeping cars, with Woodruff's patent seats and couches, upon the following terms and conditions:

First. No charge shall be made to, nor compensation paid by, said railway company for the use of the cars over the entire road between Pittsburgh and Chicago.

Second. The said railway company shall keep the cars in proper running order and condition, furnish the necessary fuel to be used in the same, provide oil for the lights, and repair all damages done to said cars, except such as may result from their defective construction and the use of improper materials.

Third. T. T. Woodruff & Co. agree to keep the inside of said cars and the upholstery thereof in order and good repair.

Fourth. T. T. Woodruff & Co. shall be entitled to receive from such passengers as may choose to occupy the couches the same compensation as is and may be paid on other through railroads between the East and West, and on lines in any way competing with the said Pittsburgh, Fort Wayne and Chicago Railway Company, the said compensation, however, not to exceed the sum of fifty cents for a night's lodging or for a single trip.

Fifth. The conductor of the railway company party hereto at his own discretion, shall have the right to seat any of the regular passengers in any of the seats of the sleeping cars not required to be used as couches.

Sixth. Regulations hereafter (to) be adopted by the parties hereto, as shall give such discretion in the admission of passengers to the sleeping cars as will favor the renting of the couches and such regulations as may be required to preserve good order therein.

Seventh. The said railway company shall carry free of charge, two persons in each sleeping car on the part of Woodruff & Co. for the purpose of renting the couches and collecting the fare for the use thereof, who are also to be taken and considered as the employees of said railway company, who shall sign a contract to that effect before commencing to run upon said cars, and be sub-
1472 jected at all times to the orders of the conductor of the train and the general rules and regulations of the company and one of whom shall act as brakesman on the train. The said railway company shall also carry over their road free of charge, the persons selected by Woodruff & Co., to have the general supervision of all the business relating to said sleeping cars.

Eighth. Messrs. Woodruff & Co. agree to place upon the road of said company as many sleeping cars as the business of the company may demand and the company require.

Ninth. Messrs. Woodruff & Co. agree to employ on said sleeping

cars, sober and trustworthy persons and none except such as said railway company may approve, the said railway company hereby reserving the right at all times, to exclude any person so employed from the cars for any misbehavior or neglect of duty.

Tenth. All improvements which the patentee of said seats and couches has made, or shall hereafter make, and all useful inventions and improvements which shall be made in sleeping cars, shall be introduced by Woodruff & Co. upon the sleeping cars on said railway whenever desired by the president of said company, so far as the same shall conduce to the safety and comfort of the passengers, or tend to increase the travel upon said road; and their compliance with this provision of the contract shall give them the exclusive right to run sleeping cars on said roads during the existence of said Woodruff's patent, provided, however, that said company shall have the right to place upon their own cars such improved seats not to be used as couches, as they may think proper. But if the said railway company shall at any time consider it their interest, from the want of sufficient patronage or from any other cause to discontinue the running of said sleeping cars, they may, in three months' notice to Woodruff & Co. require them to remove the same from the road, and this contract shall be null and void. And said notice shall not be given in less than one year after the cars shall commence running, and said Woodruff & Co. may also upon a like notice of three months after the one year as aforesaid, cease to run the same and determine this contract.

Eleventh. The regulations as to the persons to be admitted
1473 into the sleeping cars and as to the occupation of seats when not required for sleeping and all other proper rules and regulations for the government of said cars, not hereinbefore provided for, shall be as indicated by the general superintendent of said road. And it is expressly agreed, that all such rules and regulations shall be strictly obeyed by all persons employed in and about said sleeping cars.

Twelfth. It is further agreed, that the running gear of said sleeping cars shall be made to conform in every particular to that in use and deemed proper on the road of said company, and before put into service shall be subject to the approval of the general superintendent, that the axles of said cars shall be of the best Ames manufacture and made of Salisbury iron.

Thirteenth. And it is also further agreed, that said Woodruff & Co. may sell, assign and set over to any party or parties, all or any portion of their interest in this contract, with this provision however: that the assent of said railway company shall be first had and obtained for the same in writing.

Fourteenth. The agents of said railway company, when traveling on the business of said company, shall not be charged for accommodations in said sleeping cars.

In witness whereof, the said Pittsburgh, Fort Wayne and Chicago Railway Company, by their general superintendent, have hereunto affixed their corporate seal, and the said parties composing the firm

of T. T. Woodruff & Co. have also hereunto set their hands and seals this ninth day of September, 1862.

THE PITTSBURGH, FORT WAYNE & CHICAGO RAILWAY COMPANY,

(Signed) By JOHN B. JERVIS, *Gen'l Sup't.* [L. S.]

(Signed) T. T. WOODRUFF & CO.,

By T. T. WOODRUFF, *Attorney.* [L. S.]

S. COWLEY.

1474 The assent of the Pittsburgh, Fort Wayne and Chicago Railway Company, party of the first part, to the foregoing agreement, is hereby given to the transfer of this contract by the party of the second part to the Central Transportation Company, by authority of the board of directors, as per resolution of the board of directors, of 15th December, 1862.

(Signed) G. W. CASS, *President.*

Attest: W. H. BARNES, *Secretary.*

December 31st, 1862.

Articles of an agreement, made this 26th day of September, A. D. 1864, by and between the Central Transportation Company, (an incorporation under the general act of the State of Pennsylvania,) party of the first part, and the Cincinnati, Hamilton & Dayton, and Dayton & Michigan Railroad Companies, the party of the second part, witnesseth as follows:

Article 1st. For and in consideration of the covenants hereinafter mentioned, the said Central Transportation Company agree to furnish to the aforesaid railroad companies, two sleeping cars, with seats and couches constructed on the patented plans now owned by the party of the first part, and known as Woodruff, Knight, Myer, and other consolidated patents for convertible seats and couches in sleeping cars: the said cars to be constructed of the best material and in the most substantial and workmanlike manner. The bodies and trucks to be of such strength and constructed on such plan as may be required by the aforesaid party of the second part, and be fully equipped with all their latest improvements, and delivered to said party of the second part, in all respects ready for use, on or before the 1st day of October next.

Article 2d. The said party of the first part are to keep the upholstery and bedding clean and in good order at their own expense so far as usual wear and tear are concerned, and not otherwise,
1475 and to supply new bedding and upholstery when required, of the best quality used in sleeping cars, and the said party of the second part are to take all risk of casualties, both as to passengers and cars.

Article 3d. The said party of the first part is, at its own expense, to furnish two employees upon each of the said cars, one to act as porter, the other to preserve order and collect couch fares as is hereinafter provided, both of whom shall be entitled to ride free while on duty. The said employees to be treated as the em-

ployes, and be subject to the rules and regulations of the aforesaid party of the second part.

Article 4th. The said party of the second part in consideration of the use of the aforesaid sleeping cars, are to haul the same on their railroad in all the night trains, and in such manner as will best accommodate passengers on said railroad requiring the use of sleeping cars. And the said party of the second part shall, at its own expense, furnish fuel for the stoves and material for the lights, and keep said cars in good running order and repair, including renewals of worn-out parts, except such as are provided for in article 2d of this agreement. The said cars to be treated, so long as this agreement shall continue, in all respects as the cars of the party of the second part, but nothing contained in this agreement shall be so construed as affecting the title of the said party of the first part to the said cars after the termination of this contract.

Article 5th. The aforesaid party of the first part is to have the entire control of the admission of passengers into said sleeping cars, and shall be entitled to collect fifty cents for each and every couch occupied, or such other sums for the use of couches as may be usual on other lines furnishing like accommodations. Such rules and regulations shall be agreed upon as will most favor the renting of couches in said cars. The presidents, vice-presidents, and superintendents of both parties to occupy couches free of charge.

Article 6th. The said party of the first part shall furnish upon the same terms and conditions, additional cars, whenever the aforesaid cars are not sufficient to fully accommodate the passengers desiring couches, and the compliance of said party of the first
1476 part with the provisions of this article shall give them exclusive right to the use of sleeping cars upon the railroad of the party of the second part during the continuance of the incorporation of the party of the first part, not exceeding 20 years.

Article 7th. It is expressly understood and agreed, by the parties to this agreement, that this contract may, at the option of either party, be terminated for want of sufficient patronage for the use of sleeping cars, upon six months' written notice being served upon the other party to that effect. But nothing in these articles of agreement shall be so construed as to give to the said party of the second part the right to terminate and make void this contract for the substitution of other sleeping cars at any time during the continuance of the incorporation of the party of the first part, without prejudice to the rights of the aforesaid party of the first part to recover such damages as it may thereby sustain or may have sustained.

Article 8th. The said party of the second part shall have the right to run sleeping cars on its road, at its own cost, in case the party of the first part give notice of their wish to discontinue running the same for want of patronage.

Article 9th. This agreement is not to be understood as preventing the party of the second part from hauling sleeping cars of the Dayton and Hamilton and Cincinnati and Chicago Air Line cars, as well as those of the Atlantic and Great Western Co.

In witness whereof, the aforesaid parties of the first and second parts, have hereunto set their hands and seals the day and year first above written.

THE CIN., HAM. & DAY. RAILROAD CO.,
(Signed) By S. S. L'HOMMEDIEU, *President.* [L. S.]
THE DAYTON & MICHIGAN RAILROAD CO.,
(Signed) By S. S. L'HOMMEDIEU, *President.* [L. S.]
THE CENTRAL TRANSPORTATION COMPANY,
(Signed) By O. W. CHILDS, *President.* [L. S.]

1477 Memorandum of an agreement, made this twenty-eighth day of May, 1862, by and between T. T. Woodruff & Co. of the city of Philadelphia, State of Pennsylvania, by their duly authorized attorney, T. T. Woodruff; and the Bellefontaine and Indiana and Indianapolis, Pittsburgh and Cleveland Railroad Companies, by their duly authorized agent, John Brough, president Bellefontaine and Indianapolis, and general superintendent Indianapolis, Pittsburgh and Cleveland, of the said railroad companies. Witnesseth:

First. That the said T. T. Woodruff & Co. for themselves, their heirs, executors, administrators, and assigns, for and in consideration of the covenants hereinafter mentioned, do hereby agree to furnish to the said railroad company two sleeping cars, known as T. T. Woodruff's patent convertible seat and couch cars; said cars to be constructed of the best materials and in the most thorough and workmanlike manner and equipped with all the latest improvements and in every respect ready for use. The said cars to be delivered to the said railroad company within four months from this date.

Second. The said T. T. Woodruff & Co. are to keep the upholstery and bedding clean and in perfect order and repair at their own expense so far as usual wear and tear are concerned, and not otherwise. The said railroad company is to take all risks of casualties both as to passengers and cars.

Third. The said T. T. Woodruff & Co. are, at their own expense, to furnish two employees upon each of the said cars, one to serve as a porter and the other to preserve order and collect couch fares, as is hereinafter provided, both of whom shall be entitled to ride free when on duty, the said employees to be treated as the employees of the said railroad company and to be subject to the rules and regulations thereof.

Fourth. The said railroad company, in consideration of the use of the said sleeping cars are to run the same on their railroad from
1478 Crestline, Ohio, to Indianapolis, Indiana, or such other points on said railroad between those places on the night trains and in such manner as will best accommodate passengers upon said railroad requiring sleeping cars, and the said railroad company, at their own expense are to furnish fuel for the stoves, oil for the lights, and to keep the said cars in running order and repair,

including renewals of worn-out parts, except such as are provided for in article second of this agreement, the cars to be treated in all respects so long as this agreement shall continue, as the cars of the said company. But nothing contained in this agreement shall be construed as affecting the title of the said T. T. Woodruff & Co. to the said cars after the termination of this contract.

Fifth. The said T. T. Woodruff & Co. are to have the entire control of admission of passengers into said sleeping cars and to be entitled to collect fifty cents for each and every couch occupied. Such rules and regulations shall be agreed upon as will favor the renting of the couches in said cars.

Sixth. The said T. T. Woodruff & Co. to furnish upon the same terms additional cars whenever the said two cars are not sufficient to fully accommodate the passengers desiring couches, and the compliance of the said T. T. Woodruff & Co. with the provisions of this agreement shall give them an exclusive right to the use of sleeping cars upon the said railroad during the continuance of said Woodruff's patents, unless terminated as hereinafter provided for.

Seventh. It is expressly understood and agreed by the parties to this agreement that this contract may be terminated for want of sufficient patronage for the use of sleeping cars, or for any other cause, at the option of either party to this contract upon six months' written notice being served upon the other party to that effect. But nothing in this contract shall be so construed as to give to the said railroad company the right to terminate and make void this contract for the substitution of other sleeping cars at any time during the continuance of said Woodruff's patent, without prejudice to the right of the said T. T. Woodruff & Co. to recover such damages as they may sustain or may have sustained.

1479 In witness whereof we have hereunto set our hands and seals by our duly authorized agents or attorneys (in duplicate) the day and year above written, at Philadelphia.

(Signed) T. T. WOODRUFF & CO.,
By T. T. WOODRUFF, *Attorney.* [L. S.]
(Signed) THE B'NE & INDIANA R. R. CO.,
By JOHN BROUGH, *President.* [L. S.]
(Signed) THE IND., PITTS. & CL'D R. R. CO.,
By JOHN BROUGH, *Superintendent.* [L. S.]

Witnesses present at signing:
(Signed) PAUL A. DAVIS.

Articles of an agreement made this tenth day of September, A. D. 1864, by and between the Central Transportation Company, an incorporation under the general act of the State of Pennsylvania, the party of the first part; and the Marietta and Cincinnati Railroad Company, the party of the second part, witnesseth as follows:

Article 1st. For and in consideration of the covenants hereinafter mentioned, the said Central Transportation Company hereby agrees to furnish to the aforesaid Marietta and Cincinnati Railroad Company, two (2) sleeping cars with seats and couches constructed

on the patented plans, now owned by the party of the first part, and known as Woodruff, Knight, Myer and others, consolidated patents for convertible seats and couches in sleeping cars—said cars to be constructed of the best material and in the most substantial and workmanlike manner; the bodies and trucks to be of such strength and constructed on such plan as may be required by the aforesaid party of the second part, and be fully equipped with all their latest improvements and delivered to said party of the
1480 second part in all respects ready for use, on or before the first day of February, 1865.

Article 2d. The said party of the first part are to keep the upholstery and bedding clean and in good order at their own expense, so far as usual wear and tear are concerned, and not otherwise; and the said party of the second part are to take all risk of casualties, both as to passengers and cars.

Article 3d. The said party of the first part, is, at its own expense, to furnish two employees upon each of the said cars, one to act as porter, the other to preserve order and collect couch fares, as is hereinafter provided, both of whom shall be entitled to ride free while on duty; the said employees to be treated as the employees, and be subject to the rules and regulations of the aforesaid party of the second part.

Article 4th. The said party of the second part, in consideration of the use of the aforesaid sleeping cars, are to haul the same on their railroad in all the night trains, and in such manner as will best accommodate passengers on said railroad requiring the use of sleeping cars; and the said party of the second part, shall, at its own expense, furnish fuel for the stoves and material for the lights and keep the said cars in good running order and repair, including renewals of worn-out parts, except such as are provided for in article 2d of this agreement—the said cars to be treated so long as this agreement shall continue in all respects as the cars of the party of the second part, but nothing contained in this agreement shall be so construed as affecting the title of the said party of the first part to the said cars after the termination of this contract.

Article 5th. The aforesaid party of the first part is to have the entire control of the admission of passengers into said sleeping cars, and shall be entitled to collect fifty cents for each and every couch occupied, or such other sums for the use of couches as may be usual on other lines furnishing like accommodations; such rules and regulations shall be agreed upon as will most favor the renting of couches in said cars.

Article 6th. The said party of the first part, shall furnish, upon the same terms and conditions, additional cars whenever the
1481 aforesaid cars are not sufficient to fully accommodate the passengers desiring couches, and the compliance of the said party of the first part with the provisions of this article shall give them the exclusive right to the use of the sleeping cars upon the railroad of the party of the second part during the continuance of the incorporation of the party of the first part.

Article 7th. It is expressly understood and agreed, by the parties

to this agreement, that this contract may, at the option of either party, be terminated for want of sufficient patronage for the use of sleeping cars, upon six months' written notice being served upon the other party to that effect; but nothing in these articles of agreement shall be so construed as to give to the said party of the second part, the right to terminate and make void this contract for the substitution of other sleeping cars at any time during the continuance of the incorporation of the party of the first part, without prejudice to the rights of the aforesaid party of the first part to recover such damages as it may thereby sustain or may have sustained.

In witness whereof the aforesaid parties of the first and second parts have hereunto set their hands and seals the day and year first above written.

It is understood and agreed by the signers of this contract, that it is to be void unless approved by the president of the Marietta and Cincinnati Railroad Company, party of the second part.

THE CENTRAL TRANSPORTATION COMPANY,

(Signed) By ORVILLE W. CHILDS, *President.* [L. S.]

THE MARIETTA & CINCINNATI R. R. CO.,

(Signed) By JOHN DURAND, *Sup't.* [L. S.]

Sealed and delivered in presence of—
Witness to Childs & Durand:
B. F. COAN.

Approved, September 16th, 1864.
(Signed) THOS. L. WILSON,
Pres't M. & C. R. R. Co.

1482 Articles of an agreement made this 14th day of September, A. D. 1864, by and between the Central Transportation Company, an incorporation under the general act of the State of Pennsylvania, the party of the first part, and H. J. Jewett, president and receiver of the Central Ohio Railroad Company, the party of the second part, witnesseth as follows:

Article 1st. For and in consideration of the covenants hereinafter mentioned, the said Central Transportation Company hereby agrees to furnish to the aforesaid H. J. Jewett, president and receiver of the Central Ohio Railroad Company, two sleeping cars, with seats and couches constructed on the patented plans now owned by the party of the first part, and known as Woodruff, Knight, Myer and others, consolidated patents for convertible seats and couches in sleeping cars—said cars to be constructed of the best material and in the most substantial and workmanlike manner; the bodies and trucks to be of such strength and constructed on such plan as may be required by the aforesaid party of the second part, and be fully equipped with all of their latest improvements and delivered to the said party of the second part in all respects ready for use, on or before the first day of April, 1864.

Article 2nd. The said party of the first part are to keep the up-

holstery and bedding clean and in good order at their own expense, so far as usual wear and tear are concerned, and not otherwise; and the said party of the second part are to take all risk of casualties, both as to passengers and cars.

Article 3rd. The said party of the first part, is, at its own expense, to furnish two employees upon each of the said cars, one to act as porter, the other to preserve order and collect couch fares as is hereinafter provided, both of whom shall be entitled to ride free while on duty; the said employees to be treated as the employees, and be subject to the rules and regulations of the aforesaid party of the second part.

Article 4th. The said party of the second part in consideration of the use of the aforesaid sleeping cars are to haul the same
1483 on their railroad in all the night trains, and in such manner as will best accommodate passengers on said railroad requiring the use of sleeping cars; and the said party of the second part, shall, at its own expense, furnish fuel for the stoves and material for the lights, and keep said cars in good running order and repair, including renewals of worn-out parts, except such as are provided for in article 2d of this agreement; the said cars to be treated, so long as this agreement shall continue in all respects as the cars of the party of the second part; but nothing contained in this agreement shall be so construed as affecting the title of said party of the first part to the said cars after the termination of this contract.

Article 5th. The aforesaid party of the first part is to have the entire control of the admission of passengers into said sleeping cars, and shall be entitled to collect fifty cents for each and every couch occupied, or such other sums for the use of couches as may be usual on other lines furnishing like accommodations; such rules and regulations shall be agreed upon as will most favor the renting of couches in said cars.

Article 6th. The said party of the first part shall furnish, upon the same terms and conditions, additional cars whenever the aforesaid cars are not sufficient to fully accommodate passengers desiring couches; and the compliance of said party of the first part with the provisions of this article shall give them the exclusive right to the use of sleeping cars upon the railroad of the party of the second part during the continuance of the incorporation of the party of the first part.

Article 7th. It is expressly understood and agreed by the parties to this agreement, that this contract may, at the option of either party, be terminated for want of sufficient patronage for the use of sleeping cars upon six months' written notice being served upon the other party to that effect; but nothing in these articles of agreement shall be so construed as to give to said party of the second part, the right to terminate and make void this contract for the substitution of other sleeping cars at any time during the continuance of the incorporation of the party of the first part, without prejudice to the rights of the aforesaid party of the first part to recover such damages as it may thereby sustain or may have sustained.

1484 In witness whereof, the aforesaid parties of the first and second parts have hereunto set their hands and seals the day and year first above written.

(Signed) THE CENTRAL TRANSPORTATION CO.
O. W. CHILDS, *President.* [L. S.]
(Signed) D. W. CALDWELL,
For H. J. JEWETT, [L. S.]
President and Receiver, Subject to His Approval.

Sealed and delivered in presence of—
(Signed) JAMES CALDWELL.

Approved:
H. J. JEWETT,
President and Receiver Central Ohio R. R. Co.

Articles of an agreement made this twenty-sixth day of September, A. D. 1864, by and between the Central Transportation Company, an incorporation under the general act of the State of Pennsylvania, the party of the first part, and the Indianapolis and Cincinnati Railroad Company, the party of the second part, witnesseth as follows:

Article 1st. For and in consideration of the covenants hereinafter mentioned, the said Central Transportation Company hereby agrees to furnish to the aforesaid Indianapolis and Cincinnati Railroad Company two (2) sleeping cars, with seats and couches constructed on the patented plans now owned by the party of the first part, and known as Woodruff, Knight, Myer and others, consolidated patents for convertible seats and couches in sleeping cars—said cars to be constructed of the best material, and in the most substantial and workmanlike manner; the bodies and trucks to be of such strength and constructed on such plan as may be required by the aforesaid party of the second part, and be fully equipped with all of their latest improvements, and delivered to the said party of the second part in all respects ready for use on or before the fifteenth day of November next.

Article 2d. The said party of the first part are to keep the upholstery and bedding clean and in good order at their own
1485 expense, so far as usual wear and tear are concerned, and not otherwise; and the said party of the second part are to take all risk of casualties, both as to passengers and cars.

Article 3d. The said party of the first part is, at its own expense, to furnish two employees upon each of the said cars, one to act as porter, the other to preserve order and collect couch fares, as is hereinafter provided, both of whom shall be entitled to ride free while on duty; the said employees to be treated as the employees, and be subject to the rules and regulations of the aforesaid party of the second part.

Article 4th. The said party of the second part in consideration of the use of the aforesaid sleeping cars, are to haul the same on their railroad in all the night trains, and in such manner as will best ac-

commodate passengers on said railroad requiring the use of sleeping cars; and the said party of the second part, shall, at its own expense, furnish fuel for the stoves and material for the lights, and keep said cars in good running order and repair, including renewals of worn-out parts, except such as are provided for in article 2d of this agreement; the said cars to be treated so long as this agreement shall continue, in all respects as the cars of the party of the second part; but nothing contained in this agreement shall be so construed as affecting the title of said party of the first part to the said cars after the termination of this contract.

Article 5th. The aforesaid party of the first part is to have the entire control of the admission of passengers into said sleeping cars, and shall be entitled to collect fifty cents for each and every couch occupied or such other sums for the use of couches as may be usual on other lines furnishing like accommodations; such rules and regulations shall be agreed upon as will most favor the renting of couches in said cars.

Article 6th. The said party of the first part, shall furnish, upon the same terms and conditions, additional cars whenever the aforesaid cars are not sufficient to fully accommodate the passengers desiring couches—and the compliance of the said party of the first part with the provisions of this article shall give them the exclusive right to the use of sleeping cars upon the railroad of the party of the second part during the continuance of the incorporation of the party of the first part.

1486 Article 7th. It is expressly understood and agreed by the parties to this agreement that this contract may, at the option of either party, be terminated for want of sufficient patronage for the use of sleeping cars, upon six months' written notice being served upon the other party to that effect; but nothing in these articles of agreement shall be so construed as to give to the said party of the second part, the right to terminate and make void this contract for the substitution of other sleeping cars at any time during the continuance of the incorporation of the party of the first part, without prejudice to the rights of the aforesaid party of the first part to recover such damages as it may thereby sustain or may have sustained.

In witness whereof the aforesaid parties of the first and second parts have hereunto set their hands and seals the day and year first above written.

(Signed) For the CENTRAL TRANSPORTATION CO.,
By O. W. CHILDS, *President.* [L. S.]
(Signed) INDIANAPOLIS & CINCINNATI R. R. CO.,
By H. C. LORD, *President.* [L. S.]

Sealed and delivered in presence of—

——— ———.

Articles of an agreement, made at Cincinnati, State of Ohio, this twenty-first day of December, A. D. 1867, by and between the Central Transportation Company, an incorporation under the general

act of the State of Pennsylvania, the party of the first part: and the Ohio & Mississippi Railroad Company, the party of the second part, witnesseth as follows:

Article 1st. For and in consideration of the covenants hereinafter mentioned, the said Central Transportation Company hereby agrees to furnish to the aforesaid Ohio and Mississippi Railroad Company, three (3) sleeping cars with seats and couches constructed on the patented plans, now owned by the party of the first part, and known as Woodruff, Knight, Myer and others, consolidated patents for convertible seats and couches in sleeping cars—said cars to be
1487 constructed of the best material and in the most substantial and workmanlike manner; the bodies and trucks to be of such strength and constructed on such plans as may be required by the aforesaid party of the second part, and be fully equipped with all of their latest improvements and delivered to the said party of the second part in all respects ready for use, on or before the — day of ——.

Article 2d. The said party of the first part are to keep the upholstery and bedding clean and in good order at their own expense, so far as usual wear and tear are concerned, and not otherwise; and the said party of the second part are to take all risk of casualties, both as to passengers and cars, which may occur while said cars are running on said railway, or any damages which may occur to said cars or passengers when not running, arising from negligence or bad management of the party of the second part.

Article 3d. The said party of the first part, is, at its own expense, to furnish two employees upon each of the said cars, one to act as porter, the other to preserve order and collect couch fares, as is hereinafter provided, both of whom shall be entitled to ride free while on duty; the said employees to be treated as the employees, and be subject to the rules and regulations of the aforesaid party of the second part.

Article 4th. The said party of the second part, in consideration of the use of the aforesaid sleeping cars, are to haul the same on their railroad in all the night trains, and in such manner as will best accommodate passengers on said railroad requiring the use of sleeping cars; and the said party of the second part, shall, at its own expense, furnish fuel for the stoves and material for the lights, and keep said cars in good running order and repair, including renewals of worn-out parts, except such as are provided for in article 2d of this agreement—the said cars to be treated so long as this agreement shall continue in all respects as the cars of the party of the second part, but nothing contained in this agreement shall be so construed as affecting the title of said party of the first part to the said cars after the termination of this contract.

Article 5th. The aforesaid party of the first part is to have the entire control of the admission of passengers into said sleep-
1488 ing cars, and shall be entitled to collect fifty cents for each and every couch occupied, or such other sums for the use of couches as may be usual on other lines furnishing like accommo-

dations; such rules and regulations shall be agreed upon as will most favor the renting of couches in said cars.

Article 6th. The said party of the first part, shall furnish, upon the same terms and conditions, additional cars whenever the aforesaid cars are not sufficient to fully accommodate the passengers desiring couches, and the compliance of the said party of the first part with the provisions of this article shall give them the exclusive right to the use of sleeping cars upon the railroad of the party of the second part during the continuance of life of patents above named.

Article 7th. It is expressly understood and agreed by the parties to this agreement, that this contract may, at the option of either party, be terminated for want of sufficient patronage for the use of sleeping cars, upon six months' written notice being served upon the other party to that effect; but nothing in these articles of agreement shall be so construed as to give to the said party of the second part the right to terminate and make void this contract for the substitution of other sleeping cars at any time during the continuance of the incorporation of the party of the first part, without prejudice to the rights of the aforesaid party of the first part to recover such damages as it may thereby sustain or may have sustained.

In witness whereof, the aforesaid parties of the first and second parts have hereunto set their hands and seals the day and year first above written.

(Signed) THE CENTRAL TRANSPORTATION CO.,
By O. W. CHILDS, *President.* [L. S.]

(Signed) OHIO & MISSISSIPPI RAILWAY CO.,
By W. D. GRISWOLD, *President.* [L. S.]

Sealed and delivered in presence of—
(Signed) J. ERNEST GOODMAN.

Attested by—
J. F. COTTRINGER,
Secretary C. T. Co.

Attest: SAMUEL TREVOR,
Ass't Secretary.

1489 Articles of an agreement, made at Philadelphia, State of Pennsylvania, this tenth day of August, A. D. 1868, by and between the Central Transportation Company, an incorporation under the general act of the State of Pennsylvania, party of the first part, and the Columbus, Chicago and Indiana Central Railroad Company, the party of the second part, witnesseth, as follows:

Article 1st. For and in consideration of the covenants hereinafter mentioned, the said Central Transportation Company hereby agrees to furnish to the aforesaid Columbus, Chicago and Indiana Central Railroad Company, seven sleeping cars, with seats and couches constructed on the patented plans now owned by the party of the

first part, and known as Woodruff, Knight, Myer and others, consolidated patents for convertible seats and couches in sleeping cars—said cars to be constructed of the best material and in the most substantial and workmanlike manner; the bodies and trucks to be of such strength and constructed on such plans as may be required by the aforesaid party of the second part, and be fully equipped with all of their latest improvements and delivered to the said party of the second part in all respects ready for use, two on or before the 15th day of August, three on or about the 15th September, and two on or about the 1st November, 1868.

Article 2d. The said party of the first part are to keep the upholstery and bedding clean and in good order at their own expense, so far as usual wear and tear are concerned, and not otherwise; and the said party of the second part are to take all risk of casualties, both as to passengers and cars.

Article 3d. The said party of the first part, is, at its own expense, to furnish two employees upon each of the said cars, one to act as porter, the other to preserve order and collect couch fares, as is hereinafter provided, both of whom shall be entitled to ride free while on duty; the said employees to be treated as the employees, and be subject to the rules and regulations of the aforesaid party of the second part.

Article 4th. The said party of the second part in consideration of the use of the aforesaid sleeping cars are to haul the
1490 same on their railroad in all the night trains, between Columbus, Ohio, and Chicago, Ill.; between Columbus, Ohio, and the State line of Illinois, via Logansport, Reynolds, &c.; between Columbus, Ohio, and Louisville, Ky.; and on any roads the party of the second part may have control over, between St. Louis and Columbus, or elsewhere, that may at any time hereafter require sleeping cars, excepting the rights conferred upon Frederick M. Colbern by contract with the Columbus and Indianapolis Central Railway Company, dated October 10th, 1866, and in such manner as will best accommodate passengers on said railroad requiring the use of sleeping cars; and the said party of the second part, shall, at its own expense, furnish fuel for the stoves and material for the lights, and keep said cars in good running order and repair, including renewals of worn-out parts, except such as are provided for in article 2d of this agreement; the said cars to be treated, so long as this agreement shall continue, in all respects as the cars of the party of the second part; but nothing contained in this agreement shall be so construed as affecting the title of the said party of the first part to the said cars after the termination of this contract.

Article 5th. The aforesaid party of the first part is to have the entire control of the admission of passengers into said sleeping cars, and shall be entitled to collect fifty cents for each and every couch occupied, or such other sums for the use of couches as may be usual on other lines furnishing like accommodations; such rules and regulations shall be agreed upon as will most favor the renting of couches in said cars.

Article 6th. The said party of the first part, shall furnish, upon

the same terms and conditions, additional cars whenever the aforesaid cars are not sufficient to fully accommodate the passengers desiring couches—and the compliance of the said party of the first part with the provisions of this article shall give them the exclusive right to the use of sleeping cars upon the railroad of the party of the second part during the continuance of the incorporation of the party of the first part.

Article 7th. It is expressly understood and agreed by the parties to this agreement, that this contract may, at the option of
1491 either party, be terminated for want of sufficient patronage for the use of sleeping cars, upon six months' written notice being served upon the other party to that effect; but nothing in these articles of agreement shall be so construed as to give to the said party of the second part, the right to terminate and make void this contract for the substitution of other sleeping cars at any time during the continuance of the incorporation of the party of the first part, without prejudice to the rights of the aforesaid party of the first part to recover such damages as it may thereby sustain or may have sustained.

In witness whereof, the aforesaid parties of the first and second parts have hereunto set their hands the day and year first above written.

THE CENTRAL TRANSPORTATION CO.,

(Signed) By O. W. CHILDS, *President.* [L. S.]

COL., CHI. & IND. CEN. R'Y CO.,

(Signed) By B. E. SMITH, *President.* [L. S.]

Sealed and delivered in presence of—
Witness to signature of O. W. Childs, president:
(Signed) J. ERNEST GOODMAN.
(Signed) J. F. COTTRINGER.
D. RICKETS,
Witness to signature of B. E. Smith.

Articles of an agreement, made at Philadelphia, State of Pennsylvania, this first day of September, A. D. 1868, by and between the Central Transportation Company, an incorporation under the general act of the State of Pennsylvania, the party of the first part, and the Terre Haute and Indianapolis Railroad Company, the party of the second part, witnesseth as follows:

1492 Article 1st. For and in consideration of the covenants hereinafter mentioned, the said Central Transportation Company hereby agrees to furnish to the aforesaid Terre Haute and Indianapolis Railroad Company two (2) sleeping cars, with seats and couches constructed on the patented plans now owned by the party of the first part, and known as Woodruff, Knight, Myer and others, consolidated patents for convertible seats and couches in sleeping cars—said cars to be constructed of the best material and in the most substantial and workmanlike manner; the bodies and trucks to be of such strength and constructed on such plan as may be required by the aforesaid party of the second part, and be fully

equipped with all of their latest improvements, and delivered to said party of the second part in all respects ready for use, on or before the opening of the through lines for passenger travel on the St. Louis, Vandalia and Terre Haute Railroad Company.

Article 2d. The said party of the first part are to keep the upholstery and bedding clean and in good order at their own expense, so far as usual wear and tear are concerned, and not otherwise; and the said party of the second part are to take all risk of casualties, both as to passengers and cars.

Article 3d. The said party of the first part, is, at its own expense, to furnish two employees upon each of the said cars, one to act as porter, the other to preserve order and collect couch fares, as is hereinafter provided, both of whom shall be entitled to ride free while on duty; the said employees to be treated as the employees, and be subject to the rules and regulations of the aforesaid party of the second part.

Article 4th. The said party of the second part in consideration of the use of the aforesaid sleeping cars, are to haul the same on their railroad in all the night trains, and in such manner as will best accommodate passengers on said railroad requiring the use of sleeping cars; and the said party of the second part, shall, at its own expense, furnish fuel for the stoves and material for the lights, and keep said cars in good running order and repair, including renewals of worn-
out parts, except such as are provided for in article 2d of this
1493 agreement; the said cars to be treated, so long as this agreement shall continue, in all respects as the cars of the party of the second part; but nothing contained in this agreement shall be so construed as affecting the title of the said party of the first part to the said cars after the termination of this contract.

Article 5th. The aforesaid party of the first part is to have the entire control of the admission of passengers into said sleeping cars, and shall be entitled to collect fifty cents for each and every couch occupied, or such other sums for the use of couches as may be usual on other lines furnishing like accommodations; such rules and regulations shall be agreed upon as will most favor the renting of couches in said cars.

Article 6th. The said party of the first part, shall furnish, upon the same terms and conditions, additional cars whenever the aforesaid cars are not sufficient to fully accommodate the passengers desiring couches—and the compliance of the said party of the first part with the provisions of this article shall give them the exclusive right to the use of sleeping cars upon the railroad of the party of the second part *during the continuance of the incorporation of the party of the first part;* excepting the right heretofore granted by written contract with the Indianapolis and St. Louis Sleeping Couch Company.

Article 7th. It is expressly understood and agreed by the parties to this agreement, that this contract may, at the option of either party, be terminated for want of sufficient patronage for the use of sleeping cars, upon six months' written notice being served upon the other party to that effect; but nothing in these articles of agree-

ment shall be so construed as to give to the said party of the second part, the right to terminate and make void this contract for the substitution of other sleeping cars at any time during the continuance of the incorporation of the party of the first part, without prejudice to the rights of the aforesaid party of the first part to recover such damages as it may thereby sustain or may have sustained. This contract to continue in force for the term of ten years from date hereof.

1494 In witness whereof, the aforesaid parties of the first and second parts have hereunto set their hands and seals the day and year first above written.

(Signed) THE CENTRAL TRANSPORTATION CO.,
By O. W. CHILDS, *President.* [L. S.]

(Signed) THE TERRE HAUTE & IND. R. R. CO.,
By WM. R. McKEEN, *President.* [L.S.]

Sealed and delivered in presence of—

Witness to signature of O. W. Childs, president:
(Signed) WM. H. BENEDICT.
J. ERNEST GOODMAN.
(Signed) E. P. HUSTON.
Witness to signature of W. R. McKeen, president.

Articles of an agreement, made at Philadelphia, State of Pennsylvania, this first day of September, A. D. 1868, by and between the Central Transportation Company, an incorporation under the general act of the State of Pennsylvania, the party of the first part; and the St. Louis, Vandalia and Terre Haute Railroad Company, the party of the second part, witnesseth as follows:

Article 1st. For and in consideration of the covenants hereinafter mentioned, the said Central Transportation Company hereby agrees to furnish to the aforesaid St. Louis, Vandalia and Terre Haute Railroad Company (2) sleeping cars with seats and couches constructed on the patented plans, now owned by the party of the first part, and known as Woodruff, Knight, Myer and others, consolidated patents for convertible seats and couches in sleeping cars—said cars to be constructed of the best material and in the most substantial and workmanlike manner; the bodies and trucks to be of such strength and constructed on such plan as may be required by the aforesaid party of the second part, and be fully equipped with all of their latest improvements and delivered to said party
1495 of the second part in all respects ready for use, on or before the opening of the through line for passengers upon said road.

Article 2nd. The said party of the first part are to keep the upholstery and bedding clean and in good order at their own expense, so far as usual wear and tear are concerned, and not otherwise; and the said party of the second part are to take all risk of casualties, both as to passengers and cars.

Article 3rd. The said party of the first part, is, at its own expense, to furnish two employees upon each of the said cars, one to act as porter, the other to preserve order and collect couch fares, as is hereinafter provided, both of whom shall be entitled to ride free while on duty: the said employees to be treated as the employees, and be subject to the rules and regulations of the aforesaid party of the second part.

Article 4th. The said party of the second part, in consideration of the use of the aforesaid sleeping cars, are to haul the same on their railroad in all the night trains, and in such manner as will best accommodate passengers on said railroad requiring the use of sleeping cars; and the said party of the second part, shall, at its own expense, furnish fuel for the stoves and material for the lights, and keep said cars in good running order and repair, including renewals of worn-out parts, except such as are provided for in article 2d of this agreement—the said cars to be treated so long as this agreement shall continue in all respects as the cars of the party of the second part, but nothing contained in this agreement shall be so construed as affecting the title of the said party of the first part to the said cars after the termination of this contract.

Article 5th. The aforesaid party of the first part is to have the entire control of the admission of passengers into said sleeping cars, and shall be entitled to collect fifty cents for each and every couch occupied, or such other sums for the use of couches as may be usual on other lines furnishing like accommodations; such rules and regulations shall be agreed upon as will most favor the renting of couches in said cars.

1496 Article 6th. The said party of the first part, shall furnish, upon the same terms and conditions, additional cars whenever the aforesaid cars are not sufficient to fully accommodate the passengers desiring couches, and the compliance of the said party of the first part with the provisions of this article shall give them the exclusive right to the use of sleeping cars upon the railroad of the party of the second part, except that part of the road between Effingham and St. Louis, and for the term of ten years from date.

Article 7th. It is expressly understood and agreed by the parties to this agreement, that this contract may, at the option of either party, be terminated for want of sufficient patronage for the use of sleeping cars, upon six months' written notice being served upon the other party to that effect; but nothing in these articles of agreement shall be so construed as to give to the said party of the second part, the right to terminate and make void this contract for the substitution of other sleeping cars at any time during the continuance of the incorporation of the party of the first part, without prejudice to the rights of the aforesaid party of the first part to recover such damages as it may thereby sustain or may have sustained.

The above exception west of Effingham, refers only to the rights reserved to grant like privileges to other parties.

In witness whereof, the aforesaid parties of the first and second

parts have hereunto set their hands and seals the day and year first above written.

(Signed) THE CENTRAL TRANSPORTATION CO.,
By O. W. CHILDS, *President.* [L. S.]

(Signed) THE TERRE HAUTE & IND. R. R. CO.,
Lessee of the St. Louis, Vandalia & Terre Haute R. R. Co.,
By WM. R. McKEEN, *President.* [L. S.]

Sealed and delivered in presence of—
Witnesses to signature of O. W. Childs, president:
(Signed) WM. H. BENEDICT.
J. ERNEST GOODMAN.
(Signed) E. P. HUSTON,
Witness to signature of W. R. McKeen, president.

1497 Articles of an agreement, made at Philadelphia, State of Pennsylvania, this sixth day of October, A. D. 1868, by and between the Central Transportation Company, an incorporation under the general act of the State of Pennsylvania, the party of the first part, and the Jeffersonville, Madison & Indianapolis Railroad Company, the party of the second part, witnesseth, as follows:

Article 1st. For and in consideration of the covenants hereinafter mentioned, the said Central Transportation Company hereby agrees to furnish to the aforesaid Jeffersonville, Madison and Indianapolis Railroad Company, four sleeping cars, with seats and couches constructed on the patented plans now owned by the party of the first part, and known as Woodruff, Knight, Myer and others, consolidated patents for convertible seats and couches in sleeping cars—said cars to be constructed of the best material and in the most substantial and workmanlike manner; the bodies and trucks to be of such strength and constructed on such plan as may be required by the aforesaid party of the second part, and be fully equipped with all of their latest improvements and delivered to said party of the second part in all respects ready for use, on or before the 1st day of February, 1869.

Article 2d. The said party of the first part are to keep the upholstery and bedding clean and in good order at their own expense, so far as usual wear and tear are concerned, and not otherwise; and the said party of the second part are to take all risk of casualties, both as to passengers and cars.

Article 3rd. The said party of the first part, is, at its own expense, to furnish two employees upon each of the said cars, one to act as porter, the other to preserve order and collect couch fares, as is hereinafter provided, both of whom shall be entitled to ride free while on duty; the said employees to be treated as the employees, and be subject to the rules and regulations of the aforesaid party of the second part.

Article 4th. The said party of the second part in consideration of the use of the aforesaid sleeping cars are to haul the same on their railroad running between Jeffersonville, Ind., and Cambridge

1498 City via Columbus, Ind., in all the night trains, and in such manner as will best accommodate passengers on said railroad requiring the use of sleeping cars; and the said party of the second part, shall, at its own expense, furnish fuel for the stoves and material for the lights, and keep said cars in good running order and repair including renewals of worn-out parts, except such as are provided for in article 2d of this agreement; the said cars to be treated, so long as this agreement shall continue in all respects as the cars of the party of the second part; but nothing contained in this agreement shall be so construed as affecting the title of the said party of the first part to the said cars after the termination of this contract.

Article 5th. The aforesaid party of the first part is to have the entire control of the admission of passengers into said sleeping cars, and shall be entitled to collect fifty cents for each and every couch occupied, or such other sums for the use of couches as may be usual on other lines furnishing like accommodations; such rules and regulations shall be agreed upon as will most favor the renting of couches in said cars.

Article 6th. The said party of the first part shall furnish, upon the same terms and conditions, additional cars whenever the aforesaid cars are not sufficient to fully accommodate the passengers desiring couches—and the compliance of the said party of the first part with the provisions of this article shall give them the exclusive right to the use of sleeping cars upon the railroad of the party of the second part during the continuance of the incorporation of the party of the first part.

Article 7th. It is expressly understood and agreed by the parties to this agreement, that this contract may, at the option of either party, be terminated for want of sufficient patronage for the use of sleeping cars, upon six months' written notice being served upon the other party to that effect; but nothing in these articles of agreement shall be so construed as to give to the said party of the second part, the right to terminate and make void this contract for the substitution of other sleeping cars at any time, during the continuance of the incorporation of the party of the first part, without
1499 prejudice to the rights of the aforesaid party of the first part to recover such damages as it may thereby sustain or may have sustained.

The object and intent of this contract is for the purpose of forming a through line, "Louisville to New York," without change of cars.

In witness whereof, the aforesaid parties of the first and second parts have hereunto set their hands and seals the day and year first above written.

(Signed) THE CENTRAL TRANSPORTATION COMPANY,
By O. W. CHILDS, *President.* [L. S.]
(Signed) JEFF., MAD. & IND. R. R. CO.,
By D. RICKETS, *President.* [L. S.]

Sealed and delivered in presence of—
(Signed) B. E. SMITH.
J. F. COTTRINGER.

Articles of an agreement, made at Louisville, Kentucky, this seventeenth day of August, A. D. 1869, by and between the Central Transportation Company, an incorporation under the general act of the State of Pennsylvania, the party of the first part, and the Louisville, Cincinnati and Lexington Railroad Company, the party of the second part, witnesseth as follows:

Article 1st. For and in consideration of the covenants hereinafter mentioned, the said Central Transportation Company hereby agrees to furnish to the aforesaid Louisville, Cincinnati and Lexington Railroad Company, two (2) sleeping cars, with seats and couches constructed on the patented plans now owned by the party of the first part, and known as Woodruff, Knight, Myer and others, consolidated patents for convertible seats and couches in sleeping cars—said cars to be constructed of the best material and in the most substantial and workmanlike manner; the bodies and trucks to be of such strength and constructed on such plan as may be required by the aforesaid party of the second part, and be fully equipped with all of their latest improvements, and delivered to said party of the second part in all respects ready for use on or before the 10th day of September, 1869.

Article 2d. The said party of the first part are to keep the upholstery and bedding clean and in good order at their own expense, so far as usual wear and tear are concerned, and not otherwise; and the said party of the second part are to take all risk of casualties, both as to passengers and cars.

Article 3d. The said party of the first part, is, at its own expense, to furnish two employees upon each of the said cars, one to act as porter, the other to preserve order and collect couch fares, as is hereinafter provided, both of whom shall be entitled to ride free while on duty; the said employees to be treated as the employees, and be subject to the rules and regulations of the aforesaid party of the second part.

Article 4th. The said party of the second part in consideration of the use of the aforesaid sleeping cars, are to haul the same on their railroad in all the night trains, and in such manner as will best accommodate passengers on said railroad requiring the use of sleeping cars; and the said party of the second part, shall, at its own expense, furnish fuel for the stoves and material for the lights, and keep said cars in good running order and repair, including renewals of worn-out parts, except such as are provided for in article 2d of this agreement; the said cars to be treated, so long as this agreement shall continue, in all respects as the cars of the party of the second part; but nothing contained in this agreement shall be so construed as affecting the title of the said party of the first part to the said cars after the termination of this contract. The said party of the second part to furnish at a terminal station suitable facilities for airing and cleaning the bedding and upholstery of the said cars provided for in articles 1 and 6 of this agreement.

Article 5th. The aforesaid party of the first part is to have the entire control of the admission of passengers into said sleeping cars, and shall be entitled to collect fifty cents for each and

every couch occupied, or such other sums for the use of couches as may be usual on other lines furnishing like accommodations; such rules and regulations shall be agreed upon as will most favor the renting of couches in said cars.

Article 6th. The said party of the first part shall furnish, upon the same terms and conditions, additional cars whenever the aforesaid cars are not sufficient to fully accommodate the passengers desiring couches—and the compliance of the said party of the first part with the provisions of this article shall give them the exclusive right to the use of sleeping cars upon the railroad of the party of the second part during the continuance of the incorporation of the party of the first part; also, of reclining sleeping-chair cars on night trains.

Article 7th. It is expressly understood and agreed by the parties to this agreement, that this contract may, at the option of either party, be terminated for want of sufficient patronage for the use of sleeping cars, upon six months' written notice being served upon the other party to that effect; but nothing in these articles of agreement shall be so construed as to give to the said party of the second part, the right to terminate and make void this contract for the substitution of other sleeping cars at any time during the continuance of the incorporation of the party of the first part, without prejudice to the rights of the aforesaid party of the first part to recover such damages as it may thereby sustain or may have sustained; provided, however, that inasmuch as this agreement is made in the expectation that said railroad company will, within two years from this date, change the gauge of their road so as to make it conform to that of other northern roads operated by said sleeping car company, now, if within said period it shall be determined by said railroad company to retain their present gauge, then either party may terminate this agreement by one month's notice in writing to the other, and said railroad company shall compensate the sleeping car company for the actual expense incurred by them in placing their sleeping cars upon their tracks.

1502 In witness whereof, the aforesaid parties of the first and second parts have hereunto set their hands and seals the day and year first above written.

(Signed) W. Z. DUDLEY, [L. S.]
Chm. Lou., Cin. & Lex. R. R.

(Signed) THE CENTRAL TRANSPORTATION CO.,
By O. W. CHILDS, *President.* [L. S.]

Sealed and delivered in presence of—

(Signed) J. E. GEMPERLING.
Witness to W. Z. Dudley.

(Signed) J. F. COTTINGER,
Witness to O. W. Childs.

Attest:

(Signed) W. H. BEQUROTH, *Secretary.* [L. S.]

"A."

This indenture, made the seventeenth day of February, A. D. 1870, between the Central Transportation Company, a corporation existing under the laws of the Commonwealth of Pennsylvania, of the first part, and George M. Pullman, a trustee for Pullman's Palace Car Company, a corporation existing under the law of the State of Illinois, of the second part, witnesseth:

That, in consideration of the covenants and agreements on the part of the said Pullman's Palace Car Company to the said first party, to be by them kept and performed, mentioned in a certain agreement of this date between said Central Transportation Company and Pullman's Palace Car Company, and also in consideration of the sum of one dollar paid to the said first party by the said second party, the receipt whereof is hereby acknowledged, have and do hereby sell, assign, convey, transfer and release to the said second party in trust, as aforesaid, his assigns and successors, all the right title and interest of the said party of the first part in and to all and singular the inventions as secured by letters patent, reissue and extensions mentioned in the following schedule, as fully
1503 and entirely as the same are now or could be held and owned by said party of the first part.

No. 16159, granted December 2d, 1856, to T. T. Woodruff, and reissued, No. 1439, March 17th, 1863, for improvement in railroad-car seats and couches.

No. 16160, granted December 2d, 1856, to T. T. Woodruff, for improvement in railroad-car seats and couches.

No. 24257, granted May 31st, 1859, to Theodore T. Woodruff, for improvements in seats and couches for railroad cars.

No. 26942, granted January 24th, 1860, to Theodore T. Woodruff, for improvement in seats and couches of railroad cars.

No. 24563, granted June 28th, 1859, to Edward C. Knight, for improvement in arranging couches in railroad cars.

No. 25570, granted September 27th, 1859, to Edward C. Knight, for improved mode of arranging couches in railroad cars.

No. 27297, granted February 28th, 1860, to Edward C. Knight, for improvement in couches for railroad cars.

No. 11699, granted September 19th, 1854, to H. B. Myer, for improvement in converting railroad-car seats into beds or lounges, reissued May 3d, 1859, No. 711, and October 8th, 1861, No. 123, whole number, 1227, and extended seven years from September 19th, 1868.

No. 21099, granted August 3d, 1858, to Eli Wheeler, for improvement in sleeping cars for railroads, and reissued September 18th, 1860, No. 1043.

No. 25499, granted September 20th, 1859, to Eli Wheeler, for improvement in railroad-car seats.

No. 29137, granted July 17th, 1860, to Wm. A. Brown, for improvement in couches for railroad cars.

No. 2975, whole number 33979, granted December 24th, 1861, to Wm. A. Brown, for improvement in railroad-car ventilators.

No. 30254, granted May, 1858, to J. B. Creighton, for improve-

ment in railroad cars for day and night service, and reissued
1504 September 21st, 1858, No. 602, and reissued to Jacob H. Myer, May 4th, 1869.

No. 21600, granted September 28th, 1858, to J. B. Creighton, for improvement in couches in railroad cars.

No. 22364, granted December 21st, 1858, to Plymon B. Green for improvement in seats and sleeping couches for railroad cars.

No. 71258, granted November 19th, 1867, to Jonah Woodruff for improvement in sleeping cars.

No. 30517, granted October 23d, 1860, to Edward Burke, for improvement in seats and couches for railroad cars, also a license to use patented "car couplings," granted to the Central Transportation Company, August 16th, 1866, under patents issued July 3d, 1860, to I. W. Van Houten, Henry Wood, Joseph Wood and E. R. Bennett.

Together with all and every, the renewals, reissues and extensions hereof, heretofore, or which hereafter may be made. And also all right, title and interest in and to any and all letters patent, patent rights or inventions, or right of use of inventions connected with or in any way appertaining to railway cars belonging to said first party, whether enumerated in the foregoing schedule or otherwise, and also, all the right, title, interest and claim of said first party to all dues and sums of money arising from contracts for the use or sale of patent rights made by said party with and to individuals or corporations, or to which said first party may be entitled by reason of any contracts or licenses heretofore made by any person or persons, whenever the same may be due, and for the only proper use and behoof of the said second party in trust, as aforesaid, his successors and assigns.

In witness whereof, the party of the first part hath caused its corporate seal (to) be attached hereto, attested by the president and secretary, the day and year first above written.

(Signed) O. W. CHILDS, [L. S.]
President of the Central Transportation Co.

Attest: J. F. COTTRINGER, *Secretary.*

1505 On this seventeenth day of February, A. D. 1870, personally appeared before me, O. W. Childs, to me known, who, being duly sworn, deposes and says, that he is the president of the Central Transportation Company, of Pennsylvania, that he knows the corporate seal of said company, and that the seal affixed to the foregoing instrument is the corporate seal of such company, that it was affixed thereto by order of the board of directors of said company, and that he signed the name of said company to said instrument as the act and deed of said company, for the uses and purposes therein set forth by order of said board.

In witness whereof, I have hereunto set my hand and official seal.

(Signed) JOSHUA SPERING, [L. S.]
A Notary Public for the Commonwealth of Pennsylvania,
Residing in the City of Philadelphia.

Second. Debts of the Central Transportation Company, December 31st, 1869.

Pennsylvania Railroad Company:		
Bills previous to December 31st, 1869		$1,085 63
For car No. 65, about		12,000 00
For car No. 98		8,531 92
Ohio & Mississippi Railroad Company:		
For car No. 54, balance due		2,037 86
For car No. 37, amount to December 31st, 1869, about		1,000 00
Pittsburgh, Cincinnati and St. Louis railroad:		
For bills for work done to cars Nos. 91 and 92	$19,147 94	
Less allowance	$1,147 94	
	1,228 24	
	2,376 18	
	$16,771 76	
To be deducted for destruction of cars Nos. 65 and 12	11,500 00	
		5,271 76
Columbus, Chicago and Indiana Central railroad:		
For work to cars Nos. 91 and 92	$5,896 24	
Less allowance agreed upon	896 24	
		5,000 00
Harlan & Hollingsworth Company:		
For work done to cars Nos. 100 and 117		4,630 99
Pittsburgh, Ft. Wayne and Chicago Railway Company:		
Bills for repairs to December 31st, 1869		837 97
Jeffersonville, Madison and Indianapolis railroad:		
Bills for repairs to December 31st, 1869		361 95
Pittsburgh, Cincinnati and St. Louis Railway Company:		
For repairs to car No. 79, about		400 00
Marietta and Cincinnati Railroad Company:		
For repairs to car No. 64, about		1,200 00
Bellefontaine line:		
Repair bills to December 31st, 1869, about		250 00
George Harding:		
For services as patent attorney, to December 31st, 1869.		250 00

Wilhelm & Neumann:		
Bills for metal car trimmings to December 31st, 1869...		$1,615 16
Crerar, Adams & Co.:		
Bills for metal car trimmings to December 31st, 1869...		129 38
Murdock & Lacey:		
Patent pumps for car No. 54		271 75
I. E. Walraven:		
For mattress covers, car No. 98.....		152 08
Leedom, Shaw & Stewart:		
For carpets, &c., car No. 98....		127 43
W. J. Howard:		
Counsel fee for preparing lease	$1,000 00	
Legislative expenses, enrollment tax, printing, &c.	785 75	
		1,785 75
J. E. Goodman:		
Small expenses to December 31st, 1869.		43 45
		$46,983 08

All other debts and claims, but the amounts of such debts and claims, whether enumerated in the foregoing exhibit or otherwise, not to exceed the sum of sixty-three thousand nine hundred and ninety-eight $\frac{69}{100}$ dollars, ($63,998.69), that being the amount of cash transferred on the first day of January, 1870, by the Central Transportation Company to Pullman's Palace Car Company.

[U. S. revenue, $1.55.]

Recorded April 28th, 1870.

1507 (Counsel for the Pullman Palace Car Company state these two last documents are offered in evidence for the purpose of causing the correction of an error in the printed copy attached to the answer of the Pullman Palace Car Company to the cross-bill filed in this cause, the error referred to being that in article sixth. The words, "During the continuance of the incorporation of the party of the first part," are erased in the original documents now offered in evidence, and are not properly a part of the contract and should be erased from the exhibit attached to the answer in the cross-cause.

Counsel for the Central Transportation Company object to the paper offered purporting to be the original contract between the Central Transportation Company and the Terre Haute and Indianapolis Railroad Company, and also to the paper purporting to be the original of the lease between the Central Transportation Company and the Pullman Palace Car Company, and which has annexed a paper purporting to be a copy of the contract between the Central Transportation Company and the Terre Haute and Indianapolis

Railroad Company, because in both papers the variance between the contract between the Terre Haute and Indianapolis Railroad Company and the Central Transportation Company as set out in the answer to the cross-bill, and as set out in these papers now offered in evidence, consists of an erasure of certain words, which erasure has not been explained and does not appear to be noted in the papers themselves; and for the further reason that such erasure does not appear in the exemplification of the record of an original of said lease between the Central Transportation Company and the
1508 Pullman Palace Car Company, recorded in the recorder's office at Philadelphia, which exemplification counsel for the Central Transportation Company now produces and offers in evidence.)

The exemplification is marked "Exhibit No. 5, March 22nd, 1895, T. M. E., master."

A copy of the exemplification is not here printed, as it is not desired by counsel for the Central Transportation Company, it being conceded by the counsel for the Pullman Palace Car Company that the erasure above mentioned does not appear in the exemplification.)

(Counsel for the Central Transportation Company does not require the proof of the signatures, or seal, or execution of the papers offered by counsel for the Pullman Palace Car Company.)

Adjourned until Saturday, March 23d, 1895, at 12 o'clock m.

SATURDAY, *March 23d*, 1895—12 m.

Present: The master, Mr. Etting; Mr. Prichard, for complainants; and Messrs. Wintersteen, Isham, and Lincoln, for defendants.

FREDERICK C. N. ROBERTSON, having been duly sworn, was examined as follows:

By Mr. LINCOLN:

Q. You have testified before in the chancery proceedings in which this is a reference?

A. I have; yes, sir.

Q. You are the auditor of the Pullman Company?

A. I am.

Q. Captain Torrey has testified in this proceeding before the master as to the Pullman cars which were put into the service
1509 of the Central Transportation division at a period before April 1st, 1872, giving the names of those cars and their time of construction. Do you know the names of the cars that Mr. Torrey has so given?

A. I do.

Q. Are you able to state the original cost of construction of each of those cars?

A. I am. I have a memorandum to that effect before me.

Q. In what manner is the cost of construction of Pullman cars kept, or how was it kept at that time?

A. I find the cost of each car given in the ledgers and journals of the company at that time—the regular books of account of the company.

Q. Are you able to find in those books of account of the company the original cost of the construction of each of those cars?

A. I am.

Q. Have you made such an examination to find that cost yourself?

A. I have.

Q. State to the master the cost of construction of each of the Pullman cars named by Captain Torrey in his testimony as having been so put into the service. In that connection, I refer you to Captain Torrey's testimony giving the names of Pullman cars, beginning at page 1045 of the printed testimony taken on behalf of the Pullman Company in this case, that testimony having been taken before the master on the 19th of February, 1895.

(The witness here presents the following list, which counsel for the Central Transportation Company agrees may be copied in the notess, with the same effect as if the witness had read it as part of his answer.)

1510 *Original Cost of Pullman Sleeping Cars Operated in the Central Transportation Division before April*, 1872.

Name.	Cost.
Altoona	$16,414 96
Alliance	17,992 28
Altamont	15,426 27
Allegheny	15,914 97
Arlington	18,060 32
Baltimore	15,960 93
Berlin	15,916 31
Bellaire	16,460 93
Brocton	18,429 44
Bristol	17,427 20
Crestline	16,994 81
Cresson	16,414 95
China	15,252 43
Canton	16,383 66
Chester	16,383 66
Cambria	16,414 95
Cincinnati	16,460 93
Connellsville	15,960 93
Comet	9,375 25
Cumberland	15,426 27
Conestoga	15,914 46
Decatur	15,672 23
Danville	15,672 23
Dexter	18,668 99
Erie	15,053 71
Fort Wayne	16,994 81
Frederick	15,960 93
Grafton	15,960 93
Greenwood	15,426 27
Highland	16,414 95
Harrisburg	16,414 95

Huron		$19,231 78
Ivanhoe		21,728 96
Ionia		15,886 38
Juniata		16,414 96
Japan		15,252 42
	Kensington	16,383 67
1511	Kentucky	15,414 95
	Knoxville	17,427 21
Kingwood		15,426 27
Lammermoor		17,184 24
Ligonier		16,414 96
Lancaster		16,414 96
Licking		15,914 95
Louisville		15,414 96
Melrose		18,032 05
Mantua		16,414 96
Miami		15,914 95
Mt. Clare		16,460 93
Marietta		16,460 93
Mansfield		13,326 41
Massillon		13,326 41
Martinsburg		15,426 27
Marquette		17,649 70
Newark		15,914 94
Ohio		16,606 29
Oakland		15,960 93
Pennsylvania		16,606 31
Promontory		16,606 31
Persia		15,252 44
Princeton		16,383 67
Potomac		15,960 93
Plymouth		17,992 29
Paris		15,916 32
Piedmont		16,460 93
Pittsburgh		15,960 93
Parkersburg		15,426 27
Planet		9,359 55
Renovo		15,053 71
Rosedale		16,190 16
Scotia		15,252 43
Saranac		15,886 38
Scioto		15,914 94
Sarnia		19,231 79
Tyrone		16,414 95
Toledo		15,672 23
	Trenton	16,383 65
1512	Tolono	15,672 23
	Conemaugh (afterwards Titusville)	16,414 95
Tuscarora		15,914 94
Vandalia		16,414 95
Virginia		16,460 93
Wasatch		16,606 29

Waverly	$21,728 97
Wheeling	15,960 93
Westerly	17,661 39
Westfield	18,429 44
Wabash	15,672 22
Wilmington	16,383 66
Wayne	18,668 99
Xenia	15,914 94

Indorsed: "Pullman's Palace Car Co., auditor's office, Mar. 7, 1895, accounting dep't. F. Robertson, auditor."

Q. Does the above list contain a true statement of the cost of cars named in it, as shown by the books of the Pullman Company made at the time?

A. It does.

Q. What is included in the cost of each car?

A. The cost of the car body, trucks, and equipment.

Q. What do you mean by equipment?

A. Movable materials, such as curtains and bedding—all except linen. Let me modify that. At this moment I am not sure whether or not linen was included. I did not think of looking into that matter. Our plan for years has been to carry linen in a separate account, because it is so interchangeable. Whether or not it was included in the cost at that time I cannot say certainly. I don't think it was.

Q. Are you able to give, from the books of the Pullman Company in your charge, the amounts in each case received by the
1513 Pullman Company for the sale or such disposition as was made in settlement of the original one hundred and nineteen Central Transportation Company cars mentioned in the lease between the Central Transportation Company and the Pullman's Palace Car Company?

A. I am.

Q. Have you prepared a schedule from the books of the company showing the amount received in settlement for such of these cars as have been settled for in various ways?

A. I have.

Q. What does that schedule contain, in general terms?

A. It contains the name of the railroad which settled for each car that was settled for, the date of settlement, the amounts received in settlement of cars, and in some cases of equipment, the amounts received in lieu of repairs, and the amounts expended in repairs.

Q. Expended in repairs by whom?

A. By the Pullman Company.

Q. Those items are given for each particular car in the schedule, are they not?

A. Yes; as far as each particular car is involved in certain of the items.

It is agreed that said schedule may be inserted in the notes, with the same effect as if read by the witness in answer to the question. The schedule is as follows:

1514 Pullman's Palace Car Company.

Statement of Central Transportation Company's Cars.

No.	Sold to or settled by—	Date of settlement.	Amount received in settlement— Of cars.	Of equipment.	Received in lieu of repairs.	Expended in repairs.
1	Penna. R. R	6, 27, '74	$7,000 00			
2	"	3, 7, '73	7,000 00			
3	"	"	7,000 00			
4	"	3, 20, '73	9,000 00	$1,067 66		
5	"	5, 5, '73	6,000 00			
6	"	"	6,000 00			
7	"	3, 7, '73	7,000 00			
8	P. C. & St. L	11, 11, '75	7,000 00			
9	"	"	7,000 00			
10	Penna. R. R	3, 7, '73	7,000 00			
11	P. Ft. W. & C	5, 5, '73	7,000 00			
12	"	"	7,000 00			
13						$7,394 15
14						7,394 15
15	Penna. R. R	10, 16, '74	7,000 00	182 69		
16	"	8, 17, '74	7,000 00			
17	"	3, 7, '73	7,000 00			
18	"	"	7,000 00			
19	"	"	7,000 00			
20	"	"	7,000 00			
21	"	"	7,000 00			
22						
23						9,730 79
24	P. Ft. W. & C	4, 24, '74	6,000 00			
25	Penna. R. R	3, 7, '73	8,500 00	768 80		
26	B. & O	4, 12, '73	1,000 00		$3,000 00	
27	P. C. & St. L	11, 11, '75	7,000 00			
28	B. & O	4, 12, '73	1,000 00		3,000 00	
29						
30						
31	B. & O	4, 12, '73	1,000 00		3,000 00	
32	Phila. & Erie	7, 31, '73	8,000 00	1,674 19		
33	B. & O	4, 12, '73	1,000 00		3,000 00	
34	Penna. R. R	3, 7, '73	7,000 00			
35						
36	Ohio & Miss	9, 30, '82	4,000 00			
37	"	7, 31, '82	9,991 25	470 65		
38						
39		5, 2, '73			4,250 00	5,721 61
40		"			4,250 00	4,845 70
41	Penna. R. R	3, 7, '73	7,000 00			
42						
43	I. C. & L	5, 15, '73	2,500 00			
44		"	2,500 00			
45	B. & O	4, 12, '73	1,000 00	787 15	3,000 00	
46	"	"	1,000 00		3,000 00	
47	Penna. R. R	3, 7, '73	7,000 00			
48	"	"	7,000 00			430 00
	Forward		$215,491 25	$4,961 14	$26,500 00	$35,516 40
1515	Brought forward		$215,491 25	$4,961 14	$26,500 00	$35,516 40
49	Penna. R. R	6, 25, '74	7,000 00			
50	"	3, 7, '75	7,000 00			
51	P. Ft. W. & C	4, 24, '74	6,000 00			
52	"	"	7,000 00	134 46		
53	Ohio & Miss	7, 31, '82	9,991 26			
54	"	9, 30, '82	4,000 00			
55	Ala. C	7, 31, '74	6,101 57			7,394 15
56	Penna. R. R	3, 7, '73	7,000 00			
57						7,394 16
58	Penna. R. R	3, 7, '73	7,000 00			
59	"	"	7,000 00			
60	"	"	7,000 00			
61	B. & O	4, 12, '73	1,000 00		3,000 00	
62	"	"	1,000 00		3,000 00	
63		"			3,000 00	
64		"			3,000 00	
65						
66	P. C. & St. L	12, '72	6,000 00			
67	"	11, 11, '75	5,000 00			
68	"	"	6,000 00			
69	"	"	7,000 00	135 45		

Statement of Central Transportation Company's Cars—Continued.

No.	Sold to or settled by—	Date of settlement.	Amount received in settlement—		Received in lieu of repairs.	Expended in repairs.
			Of cars.	Of equipment.		
70	Penna. R. R	7, 11, '74	7,000 00			
71						
72	Penna. R. R	6, 25, '74	7,000 00			
73	P. Ft. W. & C	4, 24, '74	7,000 00			
74	"	"	7,000 00			
75	Penna. R. R	3, 7, '73	7,000 00			
76	Allegheny Co, Pa	1, 24, '80	6,495 06	1,326 91		454 56
77	P. Ft. W. & C	6, 24, '75	7,000 00			
78	"	10, 20, '75	7,000 00			
79	P. C. & St. L	11, 11, '75	7,000 00			
80	C. C. & I. C	1, '73	6,000 00			
		4, '81	Salvage.			
81			1,132 35			5,855 60
82						5,217 24
83						200 00
84						200 00
85	Penna. R. R	3, 7, '73	11,982 76			
86						1,066 89
87						
88						
89						382 96
90	Penna. R. R	4, 19, '75	7,000 00			
91						722 79
92	Penna. R. R	3, 20, '73	9,000 00			
93						
94						
95						
96						
97						699 83
98						
99	Penna. R. R	3, 7, '73	7,000 00			
	Forward		$421,194 25	$6,556 96	$38,500 00	$65,104 58
1516	Brought forward		$421,194 25	$6,556 96	$38,500 00	$65,104 58
100						
101	B. & O	4, 12, '73	1,000 00		3,000 00	
102	Penna. R. R	3, 7, '73	7,000 00			
103	Ohio & Miss	9, 30, '82	4,000 00			
104	P. C. & St. L	11, 11, '75	7,000 00			
105		"	7,000 00			
106						
107						
108						3,439 85
109						3,439 86
110						127 38
111						
112						
113						
114						472 30
115	Allegheny Co., Pa	1, 24, '80	6,495 07	1,208 18		
116	B. & O	4, 12, '73	1,000 00		3,000 00	
117						
118	Penna. R. R	3, 7, '73	7,000 00			
119						
	Total		$461,689 32	$7,765 14	$44,500 00	$72,583 97

Recapitulation.

Amount received in settlement of cars	$461,689 32
" " " equipment	7,765 14
Received in lieu of repairs	44,500 00
	$513,954 46
Less—expended in repairs	72,583 97
	$441,370 49

Pullman's Palace Car Company, auditor's office, March 9th, 1895, accounting department.

1517 Q. Explain what is meant by each of the classes of items in the columns of this schedule.

A. The amount received from the railroad for each car is the amount which was paid by the railroad for the possession of the car.

Q. Do you understand that in every case it was paid for the possession of the car?

A. That, perhaps, is an assumption of mine. So far as the books show, not having any further knowledge than that, it is the amount paid by the railroad for the car. That is in the first column of figures.

Q. Do the books in your charge show in any or in all the cases what became of the car in question?

A. They do not show always, that I know of. I cannot say now whether they show in any case. Yes; in the case of certain cars disposed of to the Baltimore and Ohio railroad they do, but they do not show in all cases, in so many words, what became of the cars.

Q. There were some settlements for wrecked and destroyed cars included in that, were there not?

A. Yes, sir.

Q. Please proceed now with your statement as to the nature of the information given in that statement.

A. The column headed "Amounts received in settlement of equipment" is of the same character as that for amounts received in settlement of cars.

Q. State, if you know, what relation is borne by the dates which you have affixed to the amounts received in settlement to the final disposition or end of life of the car in question in any given case.

A. That I cannot say. The entries themselves do not indicate it. The third column shows the amounts received in lieu of repairs.

Q. Please explain that.

1518 A. Where a railroad was under contract to maintain certain parts of the cars at certain times, they paid so much money to us in lieu of doing the work. That amount might or might not have been expended. The fourth column shows the amount actually expended in repairs by the Pullman Company on certain cars.

Q. One of the exhibits attached to the original lease between the Central Transportation Company and Pullman's Palace Car Company in this case is a schedule which is headed "Debts of the Central Transportation Company, December 31st, 1869." State, if you can, what is shown by the books of account and fiscal records of the Pullman Company as to the final disposition of the items mentioned in that schedule.

A. The books and records of the company indicate that the Pullman Company did not pay all those debts, nor did it receive the money to do so, except in one case, and that was of the Pennsylvania Railroad Company. The Pullman Company received from the Central Transportation Company $12,000 to be paid to the Pennsylvania Railroad Company, which was the only item of those debts which the Pullman Company paid, the records indicating that the Central Transportation Company paid the rest. The Pull-

man Company also received $17,000 from the Central Transportation Company as being the balance of all but $15.91 which was left in their hands after paying those debts.

Q. The result of the record being that, instead of the Pullman Company taking all the cash on hand of the Central Transportation Company, and paying those debts, as provided in the lease, that the Central Transportation Company itself discharged and settled all of those debts except one for $12,000, and the
1519 Pennsylvania Railroad Company has turned over, not the whole sum of money in its hands, but the balance of $17,000 remaining?

A. Yes; reaching the same result as if the cash had been turned over and the Pullman Company had paid it.

Q. That is, except as to the slight difference between $17,000 and $17,015.91?

A. Yes, sir.

Q. At what date was that payment of money made by the Central Transportation Company to the Pullman Company?

A. April 13th, 1870.

Cross-examination.

By Mr. PRICHARD:

Q. From what book was the statement of original cost of Pullman sleeping cars which you have produced taken?

A. From the general ledgers and general journals of the company at that time.

Q. The statement was not taken from any one book, but was made up from a number?

A. According to the years that they appeared. They were charged in different years.

Q. Was the cost of each car the cost at the time it entered the service, or does it include any items expended upon it afterwards?

A. It was, so far as the books show, the cost at the time they were built.

Q. The books do show that fact, whether it was or was not such cost, do they?

A. The books show it in effect; yes, sir.

Q. That is, you found an entry made at or about the time
1520 the car entered the service, giving the figures of its cost at that time?

A. Yes.

Q. Those figures are the figures which you have given in this paper?

A. Yes.

Q. So far as you know, they do not include any subsequent cost of work done on cars after they commenced service?

A. I know that to be the fact, because these are the first figures that appear.

Q. Were those cars built by the Pullman Company itself?

A. I cannot answer that question from positive knowledge at this moment.

Q. Would you not necessarily have ascertained that fact in ascertaining from your books the cost of the cars?

A. I might, and yet not remember it. It could be easily ascertained.

Q. Where the Pullman Company builds a car itself, in what book is the cost of such car first entered?

A. In the books of the shops at which the car is built.

Q. Is there a regular debtor entry made from the shops to the company—do the shops charge the company with the car?

A. Yes, through the accounting department accounts.

Q. That cost so charged includes what?

A. It includes the whole cost of the car, which means the car body, trucks, and the equipment.

Q. Does it include a manufacturing profit?

1521 A. I cannot say as to that, about that period. I would naturally assume that it does, from what I know of the practice of the company for years.

Q. Do you know what amount of manufacturers' profit is ordinarily charged in the practice of the company?

A. Ten per cent. for that class of cars.

Q. Is the equipment of a car made by the Pullman Company or purchased by it?

A. The material for the equipment may be purchased equipment or may be merely for the purpose of making the equipment, but in all cases the material is purchased naturally.

Q. Does the charge made by the shops to the company of the car include the equipment?

A. Yes.

Q. So that when a car leaves your shops it leaves them equipped?

A. Yes.

Q. Is there any way by which you can state how much of this cost is for car and how much for equipment?

A. In some cases, yes; although I am not sure now that I can in all. The books then were not kept in quite the same fashion that they are now, and I do not recall, having a good many things to keep in my mind, just whether the entries showed that in every case.

Q. Do your books show the date at which each of these cars included in this statement was built?

A. I think so.

Q. Can you, from memory now, state whether these cars were all built in 1871 and 1872?

A. I cannot.

1522 Q. I will ask you to complete this statement by putting the date of building, and, as far as possible, the amounts of equipment included in the cost. Does the statement which you have produced of the amounts received in settlement of Central Transportation cars agree with the statement annexed to the answer to the cross-bill filed by the Pullman Company?

A. If that is correct, I should say that it does. I presume it to be correct. I don't know that I have seen that before.

Q. So that in making up this statement you did not compare it with the statement which was annexed to the answer?

A. No, sir.

Q. Do you know whether or not the statement which you now produce agrees with the testimony given by Mr. Goodman as to the amounts received for cars?

A. I don't know what Mr. Goodman's testimony was. To your former question I would like to amend my answer. I find that this statement was taken from the books of the respondents. Therefore I can say that it does agree with that. This statement must have been prepared by my department. It must be accurate as to the amounts, as it was taken from the books. And as my statement was taken from the books, they must have agreed.

Q. In making up this statement, did you compare the statement with the testimony of Mr. Goodman given in this case?

A. No, sir.

Q. Wasn't your attention called to the fact that testimony had been given by one of your officers as to the amount received in settlement of cars?

A. No, sir.

1523 Q. Does this statement include the amount which was received from the Pennsylvania Railroad Company for the thirty-seven cars stored at Altoona?

A. I cannot say yes or no to that question.

Q. Mr. Goodman testified, and I refer you to page 398 of the testimony taken in this case, that there were thirty-seven cars stored at Altoona, for some of which the Pullman Company were paid $3,000 apiece, and for some $7,000 apiece, the cars remaining the property of the Pullman Company. Have you included those amounts in this statement?

A. I cannot say without knowing what cars those were.

Q. I read you from the testimony of Mr. Goodman, on page 398 of the testimony taken by the Pullman Company in the original bill, as follows:

"Q. How much in all had been allowed to the Pullman Company by the Pennsylvania Railroad Company, or any other railroad company, for those thirty-seven cars which were so stored at Altoona or elsewhere?

"A. For the most of those cars we received from the Pennsylvania railroad $3,000 apiece, and some of them as much as $7,000. There were only the two prices—$3,000 and $7,000. The original cars, that is, prior to this last settlement, they allowed in lieu of repairing the cars $7,000 apiece; but in the last settlement they allowed in lieu of repairs, to wind them up, $3,000 each.

"Q. Then for all those thirty-seven cars there had been an allowance by the Pennsylvania railroad of either $3,000 or $7,000 to you to repair them?

"A. To the best of my recollection, yes.

1524 "Q. Was not considerably the larger amount of allowance at the rate of $7,000?

"A. No, not in these last cars.

"Q. But I refer to the whole batch of thirty-seven. Wasn't a considerable bulk of all the thirty-seven cars settled for at an allowance for repairs of $7,000?

"A. Yes; I think so, without referring to the records—a little more than half.

"Q. In other words, were not twenty-two of the thirty-seven settled for by the allowance of $7,000, and fifteen of the thirty-seven settled for by an allowance of $3,000, excepting two which were settled for at $3,500?

"A. That may all be. The records of the company would show it."

Q. Have you included in this statement any of the amounts received for those thirty-seven cars?

A. I cannot say without knowing their numbers.

Q. Have you included in this statement any amounts of $7,000 received in lieu of repairs?

A. I don't know that it is in lieu of repairs.

Q. I ask you whether you have included in the statement any amounts of $7,000 in lieu of repairs?

A. I cannot say at the moment without getting further information.

Q. I ask you whether you have included in this statement any amounts of $7,000. If so, I will ask you to point them out upon the statement which you hold in your hands?

A. I have included amounts of $7,000 received.

Q. For repairs?

A. I don't know as to that without getting further information.

1525 Q. Haven't you in that statement which you have testified was made up by you, or under your supervision, separated the items received for repairs from those which you received for cars?

A. Yes, sir.

Q. What do you mean then by saying that you are not able to say whether there are any amounts of $7,000 received for repairs?

A. I perceive now what you want. I did not quite understand it. The column shown here as amounts received in lieu of repairs does not include any amounts of $7,000 received for such purpose.

Q. Then if it be true, as testified by Mr. Goodman, that as to more than half of the thirty-seven cars stored at Altoona the sum of $7,000 was received from the Pennsylvania railroad in lieu of repairs to each car, the statement which you have produced does not show those sums?

A. It does not. That is, it does not in that column.

Q. Do you mean that it may include them in any other column?

A. I do.

Q. Do I understand you to mean that you don't know whether this division of amounts into two classes, one of amounts received

in settlement of cars and the other of amounts received in lieu of repairs, is an accurate division?

A. It is an accurate division according to our books, but I have no knowledge beyond that.

Q. Have you any suspicion that your books are not accurate in that respect?

A. Not the slightest.

Q. Then why do you say that the amounts received for repairs may be included in the column of amounts received in settlement?

1526 A. I say that from the fact that Mr. Goodman apparently in his evidence so stated.

Q. Mr. Goodman has testified, on page 405 of complainant's testimony, that for car No. 103 there was received $7,982. How much does your list show was received for car 103?

A. $4,000.

Q. Are you able in any way to account for that discrepancy?

A. No, sir.

Q. I observe that you have a column in this statement in which you have inserted certain amounts expended in repairs for certain cars. Please state what was the object in making a list of repairs to certain cars and not to other cars.

A. I can best answer that question by saying that that is an analysis of a certain account in our books.

Q. What is that account?

A. It is called Central Transportation Company's cars.

Q. Then you have an account in your books called Central Transportation Company's cars?

A. Yes, sir.

Q. What book is that?

A. The general ledger.

Q. When were the entries in that account made?

A. At various times.

Q. Commencing about when?

A. Some time before the dates of settlement indicated in that statement opposite each car.

Q. Can you, as auditor of the company, give no explanation of why, in this account of the Central Transportation Company's cars repairs to certain cars were entered, while repairs to other cars were not?

1527 A. I cannot. I was not in the service of the company at that time. and I don't know the facts.

Q. Then, as I understand it, in making up this statement, all you have done is to analyze a ledger account called Central Transportation Company's cars?

A. Yes, sir.

Q. And you have taken no pains to verify that or to ascertain discrepancies between it and the testimony?

A. I had no means of verifying it, and I did not compare it with the testimony previously given.

Q. Wasn't the ledger account made up of items posted from other books?

A. The ledger account is made up of items posted from the journals.

Q. In analyzing this account, did you take the trouble to go back to the original journal entries?

A. Yes, sir.

Q. Can you produce a copy of that ledger account of which this is supposed to be an analysis?

A. That is a condensed copy of it.

Q. Can you produce a fac-simile of it?

A. I can.

Q. Please do so. I observe, with regard to car 115, that your statement shows amount received in settlement of that car to be $6,495.07, and the amount received in settlement of equipment to be $1,208.18. The answer states that the total amount received in settlement was $6,797.71, and Mr. Goodman in his testimony, on page 15, states the amount received in settlement to be $7,762. Can you give any explanation of the discrepancies between those three different statements?

A. I cannot.

1528 By Mr. LINCOLN:

Q. Mr. Prichard has asked you to make some additions, giving additional information to the schedule of the cost of Pullman cars. I will ask you to also add in the new schedule which you will make up to cover such additions, an indication of such of the cars as were built, not by the Pullman Company, that is to say, to show cars which were bought outside, and not built by the Pullman Company.

A. I will do so.

Q. Mr. Prichard has also asked you, referring to the testimony of Mr. Goodman as to payments made on account of cars stored at Altoona, whether your statement included amounts received for those cars. You answered, in effect, that you could not say, as you didn't know what cars they were. Do you mean to say that there — any amounts received for Central Transportation Company cars that are not in your statements?

A. I do not mean to say that. If I were given the numbers of those cars I could doubtless find them on that list. I don't know what those thirty-seven cars are.

Q. Assuming that they were Central Transportation Company cars, were there any amounts received by the Pullman Company for Central Transportation Company cars in settlement in any way, not included in that statement presented by you this morning?

A. Not to my knowledge.

Q. The statement is a full and complete statement, so far as you know, so far as the books show?

A. Yes, sir.

Q. You were also asked as to why repairs made by the Pullman Company to certain cars were indicated, and not repairs to others.

Do you know anything about what the obligation was as to
1529 making repairs to those cars by the contract under which they were running?

A. As to some of them, I do; but I do not remember as to all of them.

Adjourned, pending further cross-examination of the witness, if desired, to 12 m., Monday, March 25th, 1895.

MONDAY, *March 25th*, 1895—11 a. m.

Present: The master, Mr. Etting, and Messrs. Wintersteen, Isham, and Lincoln, of counsel for the Pullman's Company.

On account of the absence of Mr. Prichard, who telephones that he is engaged in the supreme court, adjourned to 2 p. m.

2 P. M.

Present: The master, Mr. Etting; Mr. Prichard, for complainants; Messrs. Wintersteen, Isham, and Lincoln, for defendants.

The further cross-examination of Mr. Robertson is by agreement suspended, subject to the call of the master.

JAMES F. BIRD, having been duly sworn, was examined as follows:

By Mr. LINCOLN:

Q. You have testified in this case before?

A. I have; yes, sir.

1530 Q. Please state briefly your connection with Pullman's Palace Car Company, the cross-defendant herein?

A. I entered the service of the company in 1878. In 1887 I was made auditor of receipts, and in 1890 first assistant auditor, which position I occupy at present.

Q. Are you able, from the books and accounts in charge of your office, to make a statement of the last earnings of what are known as the Central Transportation Company's cars, which are commonly spoken of as being numbered from one to one hundred and nineteen? I mean by that the latest earnings made by each car, which would indicate the date at which it went out of service.

A. I can give that information with regard to most of the cars, but some, I think, went out of service apparently before we had any detailed record by cars. Regarding such cars, I can simply say that they do not appear on the books at such a time when we first have a detailed record.

Q. Please make a full explanation of that; as to what date you can give, and as to the circumstances governing the period before and after that date in your books of account.

A. I find the earnings of cars by cars as far back as April 1st, 1872. Prior to that time I can find no records whatever by cars or by lines. I can tell from my books the last earnings of such cars as were in existence after April 1st, 1872, but regarding other cars I can only say that they do not appear on the books after April 1st, 1872.

Q. Will you give a list of the cars which do not appear from your books to have made any earnings after March 31st, 1872?

A. I have such a list before me.

1531 It is agreed that such list shall be taken as if read by the witness as part of his answer. It is as follows:

There is no record of earnings for the following-numbered Central Transportation Company cars after March 31st, 1872, at which time Pullman's Palace Car Company first began to keep records of the earnings of individual cars:

Car No.	3	No record.
	4	"
	5	"
	6	"
	7	"
	9	"
	10	"
	11	"
	17	"
	18	"
	19	"
	21	"
	24	"
	25	"
	26	"
	28	"
	29	"
	31	"
	32	"
	33	"
	34	"
	35	"
	41	"
	42	"
	43	"
	44	"
	45	"
	46	"
	48	"
	49	"
	50	"
1532	51	"
	53	"
	56	"
	58	"
	59	"
	60	"
	61	"
	62	"
	63	"
	66	"

68	No record.
80	"
85	"
92	"
99	"
101	"
102	"
116	"

Indorsed: Pullman's Palace Car Co., auditor's office, Mar. 9, 1895, accounting dept. Jas. F. Bird.

Q. Please make a statement also as to each of the remaining one hundred and nineteen cars—the last date at which each car made any earnings.

A. I have prepared a list of those cars, which I now hold in my hands, and offer as my answer to the above question.

It is agreed that the same may be taken as part of the answer of the witness. It is as follows:

1533 Memorandum of the last service of the following numbered Central Transportation Company cars from books in the auditor's office of the Pullman's Palace Car Company.

Car No.	Date of last service.
1	January 17, 1874
2	September 25, 1872
8	January 31, 1873
12	May 11, 1872
13	April 30, 1881
14	February 13, 1887
15	December 6, 1872
16	November 2, 1873
20	May 8, 1872
22	May 15, 1879
23	September 1, 1883
27	January 21, 1873
30	December 15, 1876
36	April 2, 1877
37	February 16, 1875
38	April 3, 1877
39	November 10, 1878
40	November 10, 1878
47	April 27, 1872
52	March 11, 1873
54	March 28, 1877
55	July 12, 1873
57	February 15, 1887
64	October 13, 1872
65	October 3, 1878
67	December 19, 1878
69	July 11, 1873

70	March	18, 1873
71	August	25, 1877
72	July	31, 1873
73	June	11, 1873
74	June	7, 1873
75	September	10, 1872
1534 76	July	20, 1877
77	November	2, 1872
78	March	1, 1873
79	March	10, 1873
81	November	7, 1876
82	November	22, 1876
83	October	31, 1880
84	October	31, 1880
86	June	3, 1887
87	January	13, 1878
88	March	11, 1877
89	January	9, 1878
90	July	18, 1874
91	August	4, 1889
93	May	7, 1879
94	January	16, 1877
95	May	11, 1879
96	June	29, 1878
97	May	16, 1879
98	June	7, 1878
100	November	28, 1874
103	January	17, 1877
104	August	30, 1874
105	August	31, 1874
106	December	9, 1894
107	November	26, 1894
108	December	17, 1876
109	December	18, 1876
110	June	5, 1878
111	September	14, 1877
112	September	7, 1877
113	November	11, 1876
114	September	18, 1877
115	July	15, 1877
117	October	21, 1873
119	May	10, 1879

Pullman's Palace Car Company, auditor's office, March 9th, 1895, accounting department. Jas. F. Bird.

1535 Q. Are you able to make a statement from your books of the earnings and expenses, and consequent net earnings of all of the Central Transportation Company cars to which we have referred, from the time they began to be operated by the Pullman Company up to the present time? If so, I will ask you to do so.

A. I have prepared such a statement, which I have in my hands, and which I offer as my answer to the above question.

Said statement is as follows:—

Statement Showing Gross Earnings, Gross Expenses, and Net Earnings of Central Transportation Company's Cars from January 1st, 1870, to December 31st, 1894.

Period.	Gross earnings.	Gross expenses.	Net earnings.
Jan. 1, 1870, to Mar. 31, 1872	$941,491 76	$328,078 54	$613,413 22
Ap'l 1, 1872, to Aug. 31, 1872	145,647 35	54,836 28	90,811 07
Sep. 1, 1872, to Dec. 31, 1872	104,097 40	36,934 70	67,162 70
1873	189,297 50	87,925 10	101,372 40
1874	130,056 10	63,519 35	66,536 75
1875	128,652 85	62,939 46	65,713 39
1876	158,902 85	63,977 72	94,925 13
1877	81,296 90	42,784 26	38,512 64
1878	48,471 55	29,025 70	19,445 85
1879	33,226 70	17,630 00	15,596 70
1880	30,984 07	14,736 23	16,247 84
1881	30,091 70	11,965 70	18,126 00
1882	23,896 40	12,173 88	11,722 52
1883	15,736 75	10,906 01	4,830 74
1884	13,556 98	8,558 55	4,998 43
1885	14,941 75	6,912 81	8,028 94
1886	9,032 55	5,754 23	3,278 32
1887	9,090 17	4,230 24	4,859 93
1888	6,801 99	3,731 97	3,070 02
			Net loss.
1889	4,736 75	5,363 04	*626 29*
1890	5,335 00	3,389 30	1,945 70
1891	4,570 00	2,498 17	2,071 83
1892	6,545 57	3,346 97	3,198 60
1893	6,099 93	3,617 81	2,482 12
1894	2,859 00	1,437 14	1,421 86
	$2,145,419 57	$886,273 16	$1,259,146 41

Pullman's Palace Car Company, auditor's office, March 9th, 1895, accounting department. F. Robertson.

1536 Q. You have already stated that you have no records of the earnings of individual cars prior to the month of April, 1872. I will ask you to make a full and complete statement of what your accounts show, beginning with the first day of January, 1870, and coming down to a period at which the accounts of the company began to be kept in the manner in which they are now kept, explaining fully as to each period in which any difference was made in the manner of keeping the accounts. Please do so fully.

A. For the period from January 1st, 1870, to March 31st, 1872, inclusive, the only records that we have are monthly gross earnings and gross expenses of the Central Transportation division.

For the period following that, from April 1st, 1872, forward, we have earnings by cars up to date.

We have no detailed expenses by cars between April 1st, 1872,

and September 1st, 1872. After that time, we are able to get details by cars of the gross expenses, as well as the gross earnings.

Q. How is it that you arrive at the figures for those respective periods given in the statement, which you have presented as your answer to a former question?

A. Back as far as September, 1872, we have the actual gross expenses and gross earnings by cars. Prior to September 1st, 1872, and as far back as April 1st, 1872, I find no detailed expenses, but gross earnings by cars. To ascertain approximately the expenses applicable to gross earnings between April 1st, 1872, and September 1st, 1872, I found the percentage of the gross expenses to the gross earnings for the next succeeding five months, and having found that
1537 percentage, I applied it to the gross earnings, which I already knew, for the five months prior to September 1st. Back of April 1st, 1872, I had neither gross earnings nor gross expenses by cars. I therefore found exactly the average number of cars of the Central Transportation Company and of the Pullman Company for that period, and simply divided the gross earnings and gross expenses on the basis of the total number of cars which made them.

Q. You mean the number of Central Transportation Company cars, and the number of Pullman's sleeping cars operated in the Central Transportation division?

A. Yes, sir.

Q. Please explain what you mean by the average number of cars, and how you got at that.

A. The average number of sleeping cars in the Central Transportation division was ascertained as follows: The number of days each Central Transportation car was operated in the Central Transportation division between September 1st, 1870, and April 1st, 1872, was first ascertained, and then that was divided by the total number of days covered by the period, which gave the average number of cars.

Q. Was the same basis taken for the Pullman sleeping cars operated in the same time?

A. Yes.

Q. How did you ascertain what were the Central Transportation cars, and what were the Pullman's cars operated in that time?

A. That was ascertained from the testimony given by Captain Torrey as to the dates the Central Transportation cars ceased operation and the Pullman cars commenced operation.

Q. And the length of time that they continued, no doubt, because some of them did not operate all the time. Am I right in that?

A. Yes.

1538 (Counsel for the Pullman Company state that, subject to the further examination of Mr. Robertson, they consider that they have complied with the order of the court in its reference to the master, and rest.

Counsel for the Central Transportation Company inquire if counsel for the Pullman Company have produced now all the accounts which they intend to produce, under the request from the Central Transportation Company, transmitted through the master.

In response to the above question, counsel for the Pullman Company say that the order of court calls upon the master to inquire into the value of the property of the cross-complainants, when received by the cross-defendants, together with its earnings since, less the amount paid as rent. Those earnings made by that property to the present time have been shown in the statements which have been presented. Counsel for the Pullman Company think, therefore, that they have conformed to the order of the court. They have received from Mr. Etting, the special master, a request, communicated by him from the counsel for the cross-complainants, by letter from Mr. Etting, dated December 28th, 1894, calling for certain other statements. They wish to be understood as making no factious objection to complying with this request, but they regard it as an extension of the order of the court in a material degree, and, therefore, while they will promptly and with pleasure furnish the statements whenever the order of the court is made to comprehend them, for the present, simply for the sake of the record, they decline to furnish them until the order of the court is made sufficiently specific to call for them. This is subject, however, to what may appear in the further testimony of Mr. Robertson, a wit-
1539 ness still under examination. Counsel for the Pullman Company desire to call the attention of the special master and of counsel to the fact also that the answer in this cross-cause contains a distinct plea of the statute of limitations, as applied to this accounting, and that they insist that the provisions of that statute govern the account which may be taken under this order.)

Cross-examination of the witness Mr. BIRD.

By Mr. PRICHARD:

Q. Do I understand that since September, 1872, you have kept in your books cotemporaneous records of the earnings and expenses of each car by name or number?

A. Yes, sir.

Q. Extending down to the present time, I suppose?

A. Yes, sir.

Q. On December 3d, 1887, you were examined as a witness in the cause, and testified upon examination by counsel for the Pullman Company, as follows:

"Q. How did you ascertain the amount of the earnings of the cars upon the Pennsylvania lines for the seventeen months to which that statement relates?

"A. The gross earnings are made up by lines, it being impossible to show it accurately by cars, the lines are so interwoven with each other. Each line is taken on its own basis, and all earnings for the lines shown."

How do you reconcile that statement with the statement that you now make and the accounts that you now produce?

1540 A. In the case which you have read, we were accounting for territory, and it is practically impossible to make such an accounting as has been made for these special cars, because in the

case of these cars we are not accounting for territory, but for the earnings of the cars, wherever they were made, without regard to territory. The two things are entirely different.

Q. What do you mean by saying that at the time you were answering those questions you were accounting for territory?

A. We were accounting then for earnings of certain specified territory.

Q. What territory did you then think you were accounting for?

A. For the territory which we then operated, that was covered by the sixteen Central Transportation contracts, and the contract with the Pennsylvania Company of 1870.

Q. Then your answer as of that date still holds good, and it is impossible to state accurately by cars the earnings of the lines which were formerly included in the Central Transportation Company?

A. It is.

Q. Why is that?

A. For the reason that cars are not held to any particular territory always. A car may be run part of the month on certain territory, and the balance of the month on entirely different territory.

Q. Do you mean that any of these Central Transportation Company cars were used outside the territory of the Central Transportation Company lines?

A. Yes, sir.

Q. And so also, I presume, were your own cars?

A. Yes, sir.

1541 Q. Into what division were the Central Transportation Company's lines formed upon the acquisition of those lines by the Pullman Company?

A. Most of them were included in the Central division.

Q. Was it then called the Central division?

A. Yes; I will modify that. I think at first it was called the Central Transportation division, and afterwards the Central division.

Q. Down to what date was it called the Central Transportation division?

A. That I cannot answer without reference.

Q. I show you a list of railroads included in the sixteen contracts and ask you to say how many of those were incorporated into the Central Transportation division.

A. I don't think I could answer that question in absolute detail without reference to the books, which are not here. I can give you a general idea of it.

Q. State as near as you can from recollection.

A. I can give it almost absolutely correct from memory, though there might be something not exactly accurate. Referring to the territory covered by the sixteen contracts, to the best of my knowledge, those included either wholly or in part in the Central Transportation division were as follows: The Pennsylvania railroad; the Northern Central; the Baltimore and Ohio; the New York and Washington line; the Pittsburg, Ft. Wayne and Chicago; the Cincinnati, Hamilton and Dayton; the Dayton and Michigan; the Bellefontaine and Indiana; the Indianapolis, Pittsburgh and Cleve-

land; the Marietta and Cincinnati; the Central Ohio; the
1542 Indianapolis and Cincinnati; the Ohio and Mississippi; the Columbus, Chicago and Indiana Central; the Terre Haute and Indianapolis; the St. Louis, Vandalia and Terre Haute; the Jefferson, Madison and Indianapolis; and the Louisville, Cincinnati and Lexington. I should add that some lines were operated in some of this territory in other divisions.

Q. Then all of the lines covered by those sixteen contracts were incorporated into the Central Transportation division?

A. Either in part or wholly.

Q. At that time were any other lines of railroads added to that division?

A. There were other railroads in the division.

Q. Do you mean added at the time you acquired the property or subsequently?

A. Directly afterwards.

Q. Were those lines afterwards separated into more than one division?

A. Not to any great extent. Some few lines may have been transferred from one division to another, but practically there was no change during the operation of the territory.

Q. When the Central division was formed, did that include all these railroads that you have read off?

A. Practically, yes.

Q. So that I may assume, may I not, that the Central Transportation Company division of the Pullman's Palace Car Company, and its successor, the Central division of the Pullman's Palace Car Company, included substantially the bulk of the railroads covered by the sixteen contracts with other roads that were afterwards added by the Pullman Company?

A. That is right.

1543 Q. In his examination in support of the bill, Mr. Robertson, on page 556, testified that the Cincinnati, Indianapolis, St. Louis and Chicago railroad was in the Chicago division, and that the Louisville, Cincinnati and Lexington railroad was in the Southern division. Was that an error?

A. No. It should be modified if it states that it was wholly in there. The road which you mention as being in the Chicago division, now known as the Big Four, was transferred very soon after the Central division was formed. The L., C. & L. was operated both in the Pullman Southern Car Company and the Central division of the Pullman Company.

Q. Into what other division besides the Central did any of the Central Transportation Company's lines run?

A. Answering from memory, the Southern division, the Boston division, a short time, and I think the Erie division, otherwise known as the E. & A. S. C. Car Company. At short times some of this territory was operated in part in those divisions.

Q. Can you give me the territorial limits of the Central Transportation division as it was established immediately upon the acquisition of the Central Transportation Company's lines?

A. Besides the territory covered by the sixteen contracts and the Pennsylvania contract of 1870, there was immediately added the Allegheny Valley and that also operated by what is now called the Wabash road. Other territory was added from time to time. I cannot give you the exact times from memory.

Q. The Allegheny Valley road was operated in connection with the Pennsylvania railroad lines, was it not?

1544 A. It was a separate contract.

Q. It ran from what point to what point?

A. Principally from Pittsburgh to Titusville or Corry—not in connection with the Pennsylvania.

Q. How about the Toledo road?

A. That ran from St. Louis to Toledo, and afterwards extended to New York—Cleveland and New York.

Q. Was that Toledo and Wabash road run as part of a system or was it a separate road?

A. It ran, I think, from St. Louis over the I. & St. L., and then over the Wabash road and the Michigan Central, I think, and the New York Central.

Q. What road is the I. & St. L.?

A. The Indianapolis and St. Louis.

Q. Prior to September, 1872, you did keep in your books, did you not, a statement of the gross earnings and gross expenses of the Central Transportation division?

A. Prior to April 1st, 1872, there is such a record.

Q. In what book is that kept?

A. I find that in the ledger called Central Transportation division.

Q. Did you then keep an analytical statement book?

A. The analytical statement books commenced August 1st, 1874.

Q. Have you with you a copy of the ledger account of the Central Transportation division to which you have referred?

A. I have not.

Q. That was kept between what dates?

A. Between January 1st, 1870, and March 31st, 1872.

1545 Q. That account showed the gross earnings and gross expenses of the Central Transportation division?

A. Yes, sir.

(Counsel for the Central Transportation Company call upon counsel for Pullman's Palace Car Company to produce said book.)

Q. After March 31st, 1872, in what book was kept the gross earnings and gross expenses of the Central Transportation division?

A. I think it was in the ordinary ledger.

Q. Was it under a special account?

A. It is my memory that it was under Central division in that book.

Q. After August 1st, 1874, you kept an analytical statement book, as I understand you, in which was entered the gross earnings and gross expenses of each division?

A. Yes, sir.

Q. Was there not made up each year a comparative statement upon a printed form, showing a comparison of the earnings of each division?

A. There was.

(Counsel for the Central Transportation Company calls upon counsel for Pullman's Company to produce the analytical statement books referred to by the witness.

Counsel for Pullman's Palace Car Company reply that for the reasons stated above they decline to produce these books or statements, because, according to their understanding, they are not within the scope of the order of reference made by the court. If that order is so extended as to include them they will be produced with pleasure, but for the present they are declined to be produced for the reason that they are not within the scope of this examination.)

1546 By Mr. PRICHARD (to the witness):

Q. You, together with a force in your office, have been engaged for a number of months in examining the accounts of the operation by the Pullman Company of the lines originally belonging to the Central Transportation Company, have you not?

A. I have.

Q. You are therefore reasonably familiar with the results shown by those accounts?

A. I think so.

Q. It is true, is it not, that the operations of those lines in the year 1870 and subsequent years, as shown by these ledger accounts of the Central Transportation Company division, and the analytical statement books to which you have referred, show net results from the operations of those lines very largely in excess of the rental paid to the Central Transportation Company?

(Counsel for the cross-defendant object to this question as immaterial, as not being within the scope of the examination directed by the order of the court, and for the reasons above stated instruct the witness not to answer the question without an order from the court.)

Mr. PRICHARD: There is no order of the court on the Pullman Company to answer a particular question. There is a decree in equity entered in this case, and a decree to the effect that the Pullman Palace Car Company having obtained from the Central Transportation Company certain property, and having so incorporated that property into its own that it cannot now be separated, must, upon taking the position that it can no longer pay the rental because the original contract was invalid, pay over to the Central Transportation Company the value of the thing which it had got.

1547 I do not understand that there is any ambiguity or obscurity in the decree of the court. It is not often that the court does define what it means, but in this case it has taken rather

particular pains to do so. The court says: "The value of the property and earnings must be ascertained from a careful examination of the property, business, and its earnings at the time they passed into the plaintiff's hands and subsequently." This question has once been thrashed out before the court. The argument was made by Mr. Isham that they had no property except certain cars and equipment, which had worn out, and that they tendered them back to us; whereas our argument was that the property which passed into the control of the Pullman Company was a business as large at that time as the Pullman's Company's business—a business which covered a system of sleeping-car transportation over roads which had sixteen contracts with the Central Transportation Company—a business which involved the operation of those lines with the cars and equipment, and which was producing a return of over $200,000 a year. That property has been given a value by a witness to whom they have given great credence, because they have produced him, and I am delighted that they did so, so that you could see the character of the man who was, as they themselves have shown, of all others the best fitted to judge of its value. He was a man of thorough experience and sound judgment. I have forgotten the exact figures which he gave, but perhaps that is not now material.

Of course the court said that in taking into consideration the value of the property which they had received they ought to obtain credit for the amount which they had paid as rental, and
1548 that, therefore, it would be proper to take an account of the earnings, and of what they had paid to us for it, because if they had paid to us much more than the earnings which they had received, that perhaps would be proper to take into account in ascertaining the amount which they ought to pay back as the value of the property. If I recollect aright, the court said that the earnings before and since should be taken into consideration in ascertaining the value of the property.

Now, for a number of months this case has been postponed before you upon the supposition that that accounting required an immense amount of labor. It was stated that twenty men were at work day and night, with the auditor of the company at their head, to ascertain this terribly complicated fact of the amount of the net earnings of the company. We come here today, and what do we find? We find that for most of that period a specific statement has been kept on their books of the earnings and expenses of each car. They have taken the cars of the Central Transportation Company and added up those earnings, and here is the piece of paper which they produce, which it has taken twenty men some months to compile, working day and night, together with the chief officer of the company. The theory on which this paper proceeds is that they could take out cars, keep them in a shed if they pleased, send them off on their Pacific lines if they pleased, and that now they must account to us, not for the earnings of this property which we turned over to them, but for the earnings of such of these particular cars as they chose to operate anywhere they pleased. The absurdity of

that statement is demonstrated at once. Supposing they had taken these one hundred and nineteen cars and stored them in
1549 their shed at Pullman, and operated the property which they received, sixteen contracts, and had received $500,000 a year from them after allowing six per cent. on any additional capital put in. Would they now contend, as I understand that Mr. Isham does seriously contend to you, that as against the value of the cars which they are liable to us for should be set off the gross rental that they paid to us, and that nothing should be set off against that in the way of earnings of cars, because they did not choose to operate those particular cars? Yet that is the position to which we come.

The assumption by counsel is that the property consists solely of certain cars, and nothing else. The decree of the court, as I understand it, covers the entire property—cars, contracts, equipment—the entire business. Now, the witness on the stand has assumed to give before you the earnings of certain cars. I have shown, by his cross-examination, that he does not mean earnings on our line; that they may have substituted some Pullman cars for our cars on our line. They may have stored our cars in a shed and put their own cars on. Our cars may have been wrecked; they may have received money from railroad companies for them, and substituted their own upon our division. I have shown by this witness, therefore, that those earnings which he has produced here do not in any way represent the returns from our property, but simply the amount of money that they choose to make anywhere they pleased out of any particular car which we turned over to them. Their statement bound them not only to repair, but to renew our cars. They have not included in these earnings the earnings of any cars that were
1550 substituted for ours. They could not, and of course did not, substitute any of the cars for their particular cars, but they took one hundred and nineteen cars, some of them, as the witness has said, wrecked before they took them, and some wrecked afterwards, and they employed the number of cars on the line, their own cars and partly ours. They have not given us the earnings of any cars except such of those of our cars as remained in service on their lines.

I submit that there can be no question, under the decree of the court as entered, that against the rental which they paid us must be set off the income which they received from the property—not merely the income which they received from any particular cars until they were destroyed, and not renewed by the Pullman Company.

Mr. ISHAM: Mr. Master, in the first place, there is no decree entered in this case at the present time except this order, which consists of the opinion rendered by Judge Butler, and the order of reference which is embodied in it. It is true, as counsel has said, that we have suggested to the master from time to time that the accounting officers of the Pullman Company have been very laboriously at work for a long time among the accounts, preparing for this examination. The suggestion has been made by Mr. Prichard that the only result has been the preparation of these statements. We have in fact, however, prepared a great amount of detail in the way of

accounts, in order that, our books not being here, but at a distance of a thousand miles away, and being of enormous bulk so that a car would hardly bring them here, we might have before the master the means of furnishing any information which might be
1551 required, we ourselves seeking, however, always to keep our evidence within the limits of what directed and required by the court. Whatever we are required to do as I have already said, we shall do freely and promptly, but we want to see that the requirement is clear and distinct upon us.

Now, the theory upon which we proceed, to use the phrase just employed, is not a theory, except as we desire to proceed within the terms of the order made by the court. That order is embodied in the language of the order of reference. The court held that the property which had been received by the Pullman Company, under the lease which has been held void by this court and by the Supreme Court, must be accounted for, and that if the property cannot be restored we must pay its value and account for its earnings. That is the phrase. We must account for its earnings since it was received. That is the phrase which was quoted in the letter addressed to your honor by the cross-complainants' counsel, asking that you should call upon us to furnish certain analytical statements, urging that if any of the extended time can be utilized it is desirable to do so. The court in its opinion has stated the measure of compensation to be "the value of the property when received, together with its earnings since, less the amount paid as rental." Putting aside all question of the counter-credit to be given for rent, the question that we have to deal with is what that order requires us to produce here as evidence. The master is required to learn the value of the property when received, together with its earnings since. As to the property, there has been a very great amount of testimony taken which is before the master. It is said to have consisted of certain tan-
1552 gible and of certain intangible property, cars, moneys, that were on hand in bank, certain patent rights, and contracts with railway companies for the operation of the sleeping-car service, and of what were called one hundred and nineteen cars and their equipment. To a very great extent the evidence has gone into an accounting of that property. It has been shown what patent rights there were, when they expired, and what contracts there were, and when they expired. The terms of the lease itself, which has been held void and inoperative, are of course of no governing force whatever in this inquiry. There has been evidence taken as to the cars themselves, how many there were of them, their value, their condition for service, the circumstances under which they went out of service, their earnings, and all that.

As to the moneys received it has been shown that a considerable amount of money, purporting under the lease to have been turned over to us, was to have been turned over, with which we were to pay off certain specific indebtedness of the transportation company. That money was not turned over. The transportation company itself paid off that indebtedness and turned over to us the

balance. By that process of accounting one element after another of this property has been accounted for and disposed of.

Now, as to the cars themselves. The master will find evidence here showing the history of those cars—how they went out of service, and the reasons why they went out of service. There is no such state of affairs as the hypothetical one suggested by counsel, that we might have taken cars of the Central Transportation Company, put them under a shed, and then put on our Pullman cars
1553 to operate on these lines, and so have accounted for no earnings because the Central Transportation Company cars did not make any. The evidence shows that the Central Transportation Company's cars have been made use of up to the last limit of their availability. The fundamental consideration that led to this lease was (and it is in evidence) that the equipment of the Central Transportation Company was of such a character that the railroads with which these contracts existed would no longer allow it to run on their roads. From the very moment that the Pullman Company took hold of this administration the Pennsylvania and the Ft. Wayne roads and others began to condemn those cars. They were condemned and forced out of service so fast that we could hardly get cars to fill their places and perform service on the lines; but to the last limit of their availability they were used. When they could no longer be used on principal lines, they were used wherever they could be made available; some of them have been rebuilt at considerable expense—repaired at considerable expense—and when they could not be run on principal lines they have been run on side lines. They have been run out of territory that pertained to the Central Transportation Company, and used wherever they could earn any money, and not a car has been allowed to be idle that could be used for any purpose. This is all in evidence. So far, therefore, as that particular class of property is concerned, the accounting for it is full and complete. The evidence will show that those cars have been made available just so far as they could be. Wherever a dollar has been earned by any of those cars anywhere where it could be used, that earning has been accounted for in this statement.

1554 It has been stated that there was a considerable amount of money in bank that they turned over under the lease. It was not turned over, but it was otherwise applied to uses for which it is intended. It went to pay off certain indebtedness. It was paid off preliminarily, and then the balance turned over.

So, also, when they speak of giving us one hundred and nineteen cars. We never got that number. Some of them had been already wrecked and destroyed, and did not exist—four of them at least were mere accounts against certain railroads. A number of them were old cars, built along in the fifties or early sixties, obtained by the Central Transportation Company from an earlier company called the Southern Transportation Company, inferior in quality, and costing but little. Those old cars had to go immediately out of service. The railways could not use them. That has been already shown. We have accounted for the property.

We are called upon to render a report of the earnings of the property. Having fully accounted for all the property, it remains with the master to ascertain the value of that property when we took it—that is the order of the court—"the value of the property must be ascertained at the time it passed into the plaintiff's hands and subsequently." Now, the property itself has been made the subject of a great deal of testimony—its value, its character, &c. As to the earnings, counsel say that there is other property than mere cars. There is; there is equipment. Counsel suggest that some cars were wrecked before we got them, and that some were wrecked afterwards, and that we have the money for them. Counsel have suggested also that we might hold their cars under a shed. Of course we did not do so, and they do not say that we did.

1555 So far as we got any money for those cars, the money which took the place of a car no longer useful, and which could not be used, takes its place in this accounting. We shall furnish a statement of all the moneys that we have received on account of those cars. Of the cars that remained, and that could be used, as I say, we have given, under the order of the court, the earnings of that property. So far as the patent rights went, there were no earnings from patent rights except as they were earnings of cars built under those patents. These cars were all recited to have been built under patents of Knight and these various people. The use of the patents was in the car, and the use of the car included all earnings from the patents so long as they lasted. They ran out during this operation. We have put in to the last day every earning made by the property received from the Central Transportation Company. And that is all this order calls for. It calls upon us to account for the value of the property at the time it was received, and its earnings since.

Of course we contest the principle upon which earnings or profits upon property received under such a lease are to be allowed. We contended, with the court, that earnings were not a proper subject for such accounting, the lease having been declared void. If the court sees fit to enlarge this order—if it orders us to account for all the earnings made in a division which included other lines—if it orders us to go into a comparative analysis of operations under the void lease, that we may have to do, in obedience to the order of the court, but it is not involved in the scope of this examination. We have to inquire here into the value of the property when we received it, and its earnings since, and that is exactly what we

1556 are doing. If counsel want to go further, they will have to get their order enlarged, and we shall conform to whatever order may be made by the court; but, as I have said before, as we are proceeding under an order made by the court, where the whole principle underlying it is the thing in issue, we want the court to define our obligations.

I think there is nothing further that I can say on the subject than that we have conformed to what seems to be a plain construction on the reading of the opinion. We must account for the value of the property when it was received, and its earnings since, and that is

the view which counsel for the cross-complainant also took when they addressed to you the letter of December 28th, 1894, asking from us a statement, but stating that the measure of the order, as declared in the opinion of the court, was the value of the property we received, together with its earnings since. That we have furnished. The statements called for by that letter we have also prepared, but we think they are not within the scope of this examination.

Mr. PRICHARD: I have only a word to say in reply. The point at issue between Mr. Isham and myself seems to me to be, as far as I have been able to follow the argument, that he thinks the earnings of the cars, as stated by the witness, includes the earnings of the contracts. As a matter of fact, I do not so understand the witness. I understand him to say that those are the earnings of the cars. The service of cars might be employed, whether employed under these sixteen contracts or not, whether employed on the Pacific coast under contracts with Mr. Pullman, or otherwise. That is the earnings stated here. The earnings of the contract are included in the gross earnings of the Central Transportation
1557 division. Probably other things entered into that division too, but substantially they are included in that. They are, also, to some extent, included in earnings of lines which overlapped into some other division. You will observe that it is about earnings of the Central Transportation division that I asked this witness, and also under the contracts, and he has admitted that he was unable to give the earnings of the cars otherwise than by a calculation based upon the general earnings in that division.

Mr. ISHAM: I would like to add the further suggestion that if the master would look at these contracts, as they are in evidence and will have to be looked into, when counsel speak about earnings under the contracts, that could only apply during the time the contracts were in force. These contracts all ran out, and ran out very soon. There is no provision in *in* any of them for renewal.

Mr. PRICHARD: There is such a provision in the lease.

Mr. ISHAM: That is not operative. There was a provision that in operating under the lease during ninety-nine years they should be kept renewed if possible, but we are not accounting under the void lease. These contracts expired long ago. Counsel says that we are accounting for earnings made outside in other divisions. Certainly, because those have been made since any contract ceased to exist.

Mr. PRICHARD: No; the witness covered this whole period. He said that he could not undertake to say that those were the earnings of the cars on any particular road; that from the very first cars had been used interchangeably. In fact, one of the contracts is still in operation, according to Mr. Isham's own testimony.
1558 Mr. ISHAM: In accounting for the earnings of this property we have accounted for earnings wherever they were made, even where there have been no contracts. In ruling upon this question, if the master rules directly within the limitations of this order, so that the question may go to the court, we may at all

times proceed upon solid ground, with the court's interpretation of its own order, having it construed and the position of the court defined from time to time; whereas, if the master requires us to go on and furnish this evidence, the whole thing is open until a remote period in the future perhaps, and we would suggest that it might facilitate the case, in any event, to obtain from the court what is intended and required by the order of the court, and save probably placing a great deal of testimony on the record that will perhaps not be needed.

The master here states that in his opinion the question upon which the preceding argument was had is admissible.

(Exception noted by cross-defendant.)

The question was here repeated to the witness as follows:

"It is true, is it not, that the operations of those lines in the year 1870, and subsequent years, as shown by those ledger accounts of the Central Transportation division, and the analytical-statement books to which you have referred, show net receipts from the operations of those lines very largely in excess of the rental paid to the Central Transportation Company?"

A. In excess, but not very largely. I should add that the analytical-statement books to which you refer include very much other territory, so that whatever is shown by those analytical-statement books would not refer wholly to the contracts in question.

1559 By Mr. PRICHARD:

Q. They would include, however, so far as the Central division and other divisions into which the Central Transportation Company's lines extended, all the profits made under the sixteen contracts, would they not?

A. They would.

Q. This statement which you have produced of the gross earnings and gross expenses of the Central Transportation Company cars does not include the earnings made by the operation by the Pullman Company of lines under the sixteen contracts by all the cars used in operating such lines, does it?

A. It does not.

Q. What book did you use in making up your estimate of gross earnings and gross expenses of Central Transportation Company cars from January 1st, 1870, to March 31st, 1872, as put upon the statement which you have produced?

A. As I stated before, the gross earnings and gross expenses were found in the Central Transportation Division ledger. The cars were obtained from the testimony of Captain Torrey.

Q. Have you the calculation by which you made up those figures?

A. I don't think I have it here.

Q. Have you it at your hotel?

A. No; I don't think it is there, either.

Q. Did you include in it any items not contained in the ledger account?

A. Not any.

Q. Does the amount of gross earnings include the excess of mileage paid by the railroads over the cost of repairs to cars?

1560 A. It includes nothing but sleeping-car earnings.

Q. In point of fact, during that period, from January 1st, 1870, to March 31st, 1872, the mileage received from the railroads exceeded the cost of repairs, did it not—I mean, of course, of the Central Transportation Company's lines?

A. To the best of my knowledge, every one of those contracts was what is called a maintenance contract, where the car is maintained by the railroad company.

By the MASTER:

Q. What is meant by mileage basis?

A. By mileage basis is meant a contract under which the railroad company, instead of maintaining—that is, making repairs to the cars—pays an agreed amount per mile as traversed by the car over its territory. That is in lieu of repairs to the bodies and trucks.

Q. What is maintenance basis?

A. By maintenance basis is meant a contract under which the railroad agrees to repair and maintain in proper condition the body and truck of a car.

Mr. ISHAM: That is, all excepting the sleeping-car part.

By Mr. PRICHARD:

Q. When did you commence to operate the lines over the Pennsylvania railroad under mileage contracts?

A. I shall be obliged to answer that question from memory. I think it was about the year 1879 that the Pennsylvania railroad commenced to repair one car after another, bringing it to the proper standard so that it was accepted by the Pullman Company, and from that time that particular car would be on a mileage basis. That is from memory.

1561 Q. After that time did not the amount paid by the Pennsylvania Railroad Company for mileage exceed the actual cost for repairs by the company on those cars?

A. I don't know.

Q. You kept in the ledger of the Pullman Company an account called mileage account, did you not, or net mileage account?

A. Not exactly that; we had an account called mileage and an account called repairs.

Q. Haven't you an account called net mileage? Look at the account now shown you, and state whether it did not come from your office.

A. Yes; this represents the result at the end of each year.

Q. Where the mileage received from companies was less than the cost of repairs, you carried into your annual reports that deficiency as an expenditure, did you not?

A. I think so.

Q. Where the mileage paid by companies exceed the cost of repairs, that was counted as an earning, was it not?

A. I think not. My belief is that it was carried forward, expecting that it would be absorbed in the years following.

Q. During the period from 1870 to 1885 the Central division was the most profitable division of your company, was it not?

(Objected to as irrelevant and immaterial.)

A. I cannot answer that question, because I don't know.

Q. I show you a paper produced either by you or by one
1562 of the other officers of your company during the testimony taken in the cause, purporting to be a statement of gross earnings and expenses for each division in detail for twelve months ending July 31st, 1885. Please look at it, and refresh your memory by it as to the year 1885; state then whether in the year 1885 the Central division was not the most profitable division in the Pullman's Company's system?

(Same objection. Objection overruled. Exception by cross-defendant.)

A. This statement does not show the entire result of the business of the company. This is a statement made practically for the convenience of the auditing department.

Q. It does, however, purport to show the gross earnings and gross expenses of each division, does it not?

A. It shows the gross earnings and gross operating expenses of each division.

Q. Including administration expenses, does it not?

A. Yes, sir.

Q. It also shows, does it not, that the gross operating expenses were less in proportion to the gross receipts in the Central division than in any other division for the year 1885?

(It is noted that all questions on this line are considered as if objected to, the objection overruled, and exception noted, without the necessity of repeating the objection.)

A. Yes, that is a fact.

Q. It shows also that with the exception of one other division, namely, the Pacific division, the proportion of gross expenses to gross receipts was less in the Central division than any other, does it not?

A. It does.

1563 Q. Have you among the records of the Pullman Company analytical statements similar to that for the years prior to 1885?

A. We have back to and including the fiscal year ending July 31st, 1875.

(Counsel for the Central Transportation Company call upon counsel for Pullman's Company to produce those statements.)

Mr. ISHAM: That we decline to do without specific order.

By Mr. PRICHARD:

Q. What is your recollection now as to whether, during the years prior to 1885, the results of the Central division, as shown by the analytical statements, were not as favorable, if not more favorable, than the results shown by the other divisions?

A. I have not compared them, so that I cannot really answer that question.

Q. In this analytical statement for 1885 the net earnings per car on the Central division are $4,143.10, are they not?

A. The cars shown in this statement do not represent the entire number of cars assigned to or used in any one of these divisions. They represent the cars earning each month over ten dollars, and not the cars lying idle as protective cars or in shops. Therefore you could hardly say that the net earnings of the cars in the Central division were shown by this statement.

Q. The statement purports, however, to have a series of columns opposite the items "Net earnings per car," does it not?

A. It does.

Q. In the column appropriated to the Central division, opposite "Net earnings per car" are what figures?

A. $4,143.10.

1564 Q. What are the next highest figures opposite net earnings per car in any other division of the road?

A. The Pacific division.

Q. What are those figures?

A. $3,687.77. The same remarks would apply to the Pacific division as to the Central.

Q. Have you made up any statement showing the gross and net earnings, or either of them, made by the Pullman Company after 1870 by the operation of cars under the sixteen contracts to which you have referred?

A. I have made such a statement.

Q. When was that statement made?

A. During the last two months.

Q. From what books was it made?

A. From the same books as the statements already produced, to some extent.

Q. Do you mean from books showing the earnings of each car?

A. It was made from books showing the earnings of each line, and to some extent the car book has to be used where the lines are not obtainable.

(Counsel for the Central Transportation Company call upon counsel for Pullman's Palace Car Company to produce said statement.

Counsel for Pullman's Palace Car Company state that the witness will furnish the statement called for upon the order of the master, but not otherwise, they objecting to it, however, as not within the scope of the examination called for by the order.)

Adjourned to 11 a. m., Tuesday March 26th, 1895.

1565 TUESDAY, *March 26th*, 1895—11 a. m.

Present: The master (Mr. Etting); Mr. Prichard, for complainants; Messrs. Wintersteen, Isham, and Lincoln, for defendants.

Mr. LINCOLN: In response to a call by the master contained in his letter of December 31st, 1894, to us, we produce a series of statements, called analytical statements, which have attached in front of them an explanatory note indicating what they do not purport to contain. These are the statements which we declined to produce yesterday, but which are now produced, subject to the objection then made.

(Said statements marked "T. M. E., master, March 26th, 1895, No. 1.")

Endorsed: The following statements, eleven in number, are given in compliance with the letter addressed by Messrs. Prichard and Johnson to Theo. M. Etting, special master, dated December 28th, 1894. They are copies of what the letter above mentioned assumes to be, the "annual statements (covering Central Transportation lines) of the earnings of each division, showing the gross and net earnings per car," which, by the letter above referred to, the Pullman Company is requested to furnish to the master. They are the statements alleged in that letter to be found "in what is called an analytical statement book, and a sample of which is found on page 816 of the Pullman testimony."

The statements of which copies are thus furnished are subject to the following specific qualifications and limitations, namely:

1566 1. These statements do not belong to the regular and public accounts. 2. They are private statements or memoranda prepared for the reference and guidance of the persons working in the accounting department. They were intended as means to facilitate the working of the machinery of that department. For example, in dealing with the average number of cars counted as operated in each division, they deal only with the average number of cars which earned ten dollars or over in any month. These statements were not intended to be, and are not complete exhibits of the business of each division, and taken by themselves alone would be misleading, though useful for the purposes in the accountant's work, for which they were made.

Statement of Gross Earnings and Expenses for Each Division in Detail for Fiscal Year Ending July 31st, 1875.

	Chicago division.	Central division.	Southern division.	Erie division.	Boston division.
Number of cars operated..	115	187	23	33	13
Gross earnings	$554,849 56	$1,077,748 55	$92,172 39	$186,800 55	$52,120 75
Expenses:					
Proportion of administration expenses	31,947 76	51,777 18	6,518 48	8,913 32	3,735 90
Division salaries	7,022 42	9,008 72	1,579 98	9,551 91	2,039 43
" expenses	7,792 59	19,783 73	2,818 85	4,855 84	1,053 82
District salaries	20,815 38	40,989 56	3,556 53		
" expenses	4,805 95	12,696 62	2,083 07		
Conductors	62,433 35	92,704 74	16,328 87	16,889 75	7,159 88
Porters	17,834 77	32,112 10	3,221 58	4,605 18	1,469 38
Car-cleaners	8,863 00	19,786 17	774 47	6,599 35	
Washing	25,270 83	39,755 73	4,670 67	4,362 67	2,196 90
Supplies, &c	6,968 42	13,730 36	1,677 27	2,110 76	360 30
Patent royalty			9,217 24		
Total operating expenses	193,754 47	335,344 91	52,447 01	57,888 78	18,015 61
Maintenance of upholstery of seats and backs, and minor betterments and repairs of cars	19,268 77	44,040 91	6,387 17		15 24
Maintenance of equipment	16,993 86	35,038 32	1,521 64		923 69
Gross expenses	230,017 10	414,424 14	60,355 82	57,888 78	18,954 54
Total net earnings	324,832 46	663,324 41	31,816 57	128,911 77	33,166 21
Gross earnings per car	4,824 78	5,763 36	4,007 49	5,660 62	4,009 29
" expenses per car	2,000 15	2,216 17	2,624 16	1,754 21	1,458 04
Net earnings per car	2,824 63	3,547 19	1,383 33	3,906 41	2,551 25
Percentage of operating expenses to gross earnings	34.92	31.12	56.90	30.99	34.57
Percentage of gross expenses to gross earnings	41.46	38.45	65.48	30.99	36 37

Statement of Gross Earnings and Expenses for Each Division in Detail for Fiscal Year Ending July 31st, 1876.

	Chicago division.	Central division.	Southern division.	Erie division.	Boston division.
Number of cars operated	89	191	17	32	14
Gross earnings	$423,708 22	$1,154,697 55	$74,024 36	$182,772 90	$54,474 95
Expenses:					
Proportion of administration expenses	23,356 36	49,334 00	4,511 53	8,336 47	3,444 49
Division salaries	6,431 81	7,987 41	1,408 00	9,577 74	1,441 09
" expenses	6,667 64	18,450 72	764 24	5,613 77	1,033 26
District salaries	17,631 57	39,216 46	3,318 81		
" expenses	3,486 73	13,497 02	2,252 72		
Conductors	42,063 44	89,762 05	10,719 00	17,094 43	6,769 51
Porters	15,699 44	31,839 22	2,326 04	5,061 03	1,490 82
Car-cleaners	9,387 07	21,621 78	938 95	7,176 96	37 81
Washing	19,911 21	41,550 36	3,598 31	4,278 34	1,785 94
Supplies, &c	6,884 59	11,750 59	1,293 03	1,867 25	683 36
Patent royalty	.....	.....	7,402 43		
Total operating expenses	151,419 86	325,009 61	38,533 06	59,005 99	16,686 21
Maintenance of upholstery of seats and backs, and minor betterments and repairs of cars	18,964 07	73,809 73	7,128 10	.....	657 49
Maintenance of equipment	23,117 86	40,364 15	2,414 09	.....	599 35
Gross expenses	193,501 79	439,183 49	48,075 25	59,005 99	17,943 05
Total net earnings	230,206 43	715,514 06	25,949 11	123,766 91	36,531 90
Gross earnings per car	4,760 76	6,045 54	4,354 37	5,711 65	3,891 07
" expenses per car	2,174 18	2,299 39	2,827 95	1,843 94	1,281 65
Net earnings per car	2,586 58	3,746 15	1,526 42	3,867 71	2,609 42
Percentage of operating expenses to gross earnings	35.74	28.15	52.04	32.28	30.63
Percentage of gross expenses to gross earnings	45.67	38.03	64.92	32.28	32.94
Percentage of operating expenses to gross earnings, fiscal year ending July 31st, 1875	34.92	31.12	56.90	30.99	34.57
Percentage of gross expenses to gross earnings, fiscal year ending July 31st, 1875	41.46	38.45	65.48	30.99	36.37

885

Statement of Gross Earnings and Expenses for Each Division in Detail for Fiscal Year Ending July 31st, 1877.

	Chicago division.	Central division.	Southern division.	Erie division.
Number of cars operated	75	212	15	29
Gross earnings	$362,594 80	$1,253,826 30	$54,506 45	$164,545 25
Expenses:				
Proportion of administration expenses	18,193 45	51,297 05	3,610 07	7,062 94
Division salaries	6,156 00	9,088 84	948 70	10,131 14
" expenses	6,862 71	16,954 14	967 55	5,632 23
District salaries	14,360 19	42,119 09	2,038 33	
" expenses	3,629 41	13,108 26	1,463 83	
Conductors	32,573 05	89,276 97	7,306 83	14,814 99
Porters	13,387 45	35,068 67	1,722 89	4,068 37
Car-cleaners	9,009 52	23,600 67	768 63	5,891 35
Washing	17,139 92	45,616 48	2,529 66	3,829 67
Supplies, &c.	8,531 04	11,324 57	1,527 77	1,811 77
Total operating expenses	129,842 74	337,454 74	22,884 26	53,242 46
Maintenance of upholstery of seats and backs, and minor betterments and repairs of cars	17,270 45	53,751 89	10,646 57	
Maintenance of equipment	18,202 64	34,196 80	1,850 71	
Gross expenses	165,315 83	425,403 43	35,381 54	53,242 46
Total net earnings	197,278 97	828,422 87	19,124 91	111,302 79
Gross earnings per car	4,834 60	5,914 28	3,633 76	5,673 98
" expenses per car	2,204 21	2,006 62	2,358 77	1,835 95
Net earnings per car	2,630 39	3,907 66	1,274 99	3,838 03
Percentage of operating expenses to gross earnings	35.81	26.91	41.99	32.36
Percentage of gross expenses to gross earnings	45.59	33.93	64.73	32.36
Percentage of operating expenses to gross earnings, fiscal year ending July 31st, 1876	35.74	28.15	52.04	32.28
Percentage of gross expenses to gross earnings, fiscal year ending July 31st, 1876	45.67	38.03	64.92	32.28

1570 Pullman's Palace Car Company.

Statement of Gross Earnings and Expenses for Each Division in Detail for Fiscal Year Ending July 31st, 1878.

	Chicago division.	Central division.
Number of cars operated	78	189
Gross earnings	$372,124 31	$946,745 13
Expenses:		
Proportion of administration expenses	18,815 37	45,690 51
Division salaries	5,932 16	8,120 00
" expenses	6,123 45	14,692 72
District salaries	13,989 61	39,224 18
" expenses	2,726 20	13,588 72
Conductors	36,354 83	81,401 91
Porters	14,474 49	30,528 95
Car-cleaners	11,637 73	25,528 59
Washing	16,947 60	34,737 43
Supplies, &c	5,759 50	10,532 20
Total operating expenses	132,760 94	304,045 21
Maintenance of upholstery of seats and backs, and minor betterments and repairs of cars	12,921 91	51,166 61
Maintenance of equipment	15,965 74	35,364 11
Gross expenses	161,648 59	390,575 93
Total net earnings	210,475 72	556,169 20
Gross earnings per car	4,770 82	5,009 23
" expenses per car	2,072 41	2,066 53
Net earnings per car	2,698 41	2,942 70
Percentage of operating expenses to gross earnings	36.88	32.12
Percentage of gross expenses to gross earnings	43.44	41.25
Percentage of operating expenses to gross earnings, fiscal year ending July 31st, 1877	35.81	26.91
Percentage of gross expenses to gross earnings, fiscal year ending July 31st, 1877	45.59	33.93

1571 Pullman's Palace Car Company.

Statement of Gross Earnings and Expenses for Each Division in Detail for Fiscal Year Ending July 31st, 1879.

	Chicago division.	Central division.
Number of cars operated	80	187
Gross earnings	$400,485 58	$966,687 70
Expenses:		
Proportion of administration expenses	19,704 07	46,152 19
Division salaries	5,507 90	8,580 20
" expenses	4,788 32	15,378 35
District salaries	14,060 78	41,617 05
" expenses	2,715 44	15,662 05
Conductors	36,827 40	85,367 06
Porters	15,830 15	31,746 07
Car-cleaners	12,635 82	30,382 32
Washing	17,433 77	35,983 34
Supplies, &c	6,948 84	10,442 84
Total operating expenses	136,452 49	321,311 47
Maintenance of upholstery of seats and backs, and minor betterments and repairs of cars	18,310 79	69,807 99
Maintenance of equipment	16,364 97	30,808 89
Gross expenses	171,128 25	421,928 35
Total net earnings	229,357 33	544,759 35
Gross earnings per car	5,006 07	5,169 45
" expenses per car	2,139 10	2,256 30
Net earnings per car	2,866 97	2,913 15
Percentage of operating expenses to gross earnings	34.07	33.24
Percentage of gross expenses to gross earnings	42.73	43.65
Percentage of operating expenses to gross earnings, fiscal year ending July 31st, 1878	36.88	32.12
Percentage of gross expenses to gross earnings, fiscal year ending July 31st, 1878	43.44	41.25

1572 Pullman's Palace Car Company.

Statement of Gross Earnings and Expenses for Each Division in Detail for Fiscal Year Ending July 31st, 1880.

	Chicago division.	Central division.
Number of cars operated	99	195
Gross earnings	$555,864 45	$1,153,193 77
Expenses:		
Proportion of administration expenses	24,862 22	48,932 63
Division salaries	5,520 00	9,540 75
" expenses	5,451 83	15,649 10
District salaries	16,063 03	45,062 43
" expenses	3,335 56	15,015 19
Conductors	42,809 84	89,961 65
Porters	20,411 43	32,474 07
Car-cleaners	18,540 83	37,651 71
Washing	18,413 99	33,085 35
Supplies, &c	6,054 55	9,630 65
Total operating expenses	161,463 28	337,003 53
Maintenance of upholstery of seats and backs, and minor betterments and repairs of cars	11,407 72	56,627 46
Maintenance of equipment	15,818 15	34,314 26
Gross expenses	188,689 15	427,945 25
Total net earnings	367,175 30	725,248 52
Gross earnings per car	5,614 79	5,913 81
" expenses per car	1,905 95	2,194 59
Net earnings per car	3,708 84	3,719 22
Percentage of operating expenses to gross earnings	29.05	29.22
Percentage of gross expenses to gross earnings	33.95	37.11
Percentage of operating expenses to gross earnings, fiscal year ending July 31st, 1879	34.07	33.24
Percentage of gross expenses to gross earnings, fiscal year ending July 31st, 1879	42.73	43.65

1573 Pullman's Palace Car Company.

Statement of Gross Earnings and Expenses for Each Division in Detail for Fiscal Year Ending July 31st, 1881.

	Chicago division.	Central division.
Number of cars operated	118	191
Gross earnings	$700,928 62	$1,218,427 51
Expenses:		
Proportion of administration expenses	32,076 50	51,955 59
Division salaries	5,976 14	11,795 59
" expenses	7,579 97	16,807 03
District salaries	19,512 16	47,818 93
" expenses	5,958 10	14,815 19
Conductors	55,758 54	95,109 21
Porters	24,945 72	32,233 70
Car-cleaners	21,366 58	37,988 30
Washing	21,963 75	32,233 57
Supplies, &c	6,663 97	12,834 23
Total operating expenses	201,801 43	353,591 34
Maintenance of upholstery of seats and backs, and minor betterments and repairs of cars	11,992 01	74,821 83
Maintenance of equipment	22,875 61	37,517 71
Gross expenses	236,669 05	465,930 88
Total net earnings	464,259 57	752,496 63
Gross earnings per car	5,940 07	6,379 20
" expenses per car	2,005 67	2,439 43
Net earnings per car	3,934 40	3,939 77
Percentage of operating expenses to gross earnings	28.79	29.02
Percentage of gross expenses to gross earnings	33.77	38.24
Percentage of operating expenses to gross earnings, fiscal year ending July 31st, 1880	29.05	29.22
Percentage of gross expenses to gross earnings, fiscal year ending July 31st, 1880	33.95	37.11

1574 Pullman's Palace Car Company.

Statement of Gross Earnings and Expenses for Each Division in Detail for Fiscal Year Ending July 31st, 1882.

	Chicago division.	Central division.
Number of cars operated	138	194
Gross earnings	$922,360 06	$1,384,792 43
Expenses:		
Proportion of administration expenses	40,349 21	56,862 82
Division salaries	6,808 29	12,864 65
" expenses	8,973 40	19,305 67
District salaries	23,941 61	53,577 89
" expenses	7,466 51	15,000 28
Conductors	71,317 05	103,438 37
Porters	29,139 00	36,178 44
Car-cleaners	27,188 84	44,364 75
Washing	30,160 17	37,286 76
Supplies, &c.	9,449 32	16,186 16
Total operating expenses	254,793 40	395,065 79
Maintenance of upholstery of seats and backs, and minor betterments and repairs of cars	16,449 81	52,735 04
Maintenance of equipment	28,775 22	52,174 10
Gross expenses	300,018 43	499,974 93
Total net earnings	622,341 63	884,817 50
Gross earnings per car	6,683 77	7,138 10
" expenses per car	2,174 05	2,577 19
Net earnings per car	4,509 72	4,560 91
Percentage of operating expenses to gross earnings	27.62	28.53
Percentage of gross expenses to gross earnings	32.52	36.10
Percentage of operating expenses to gross earnings, fiscal year ending July 31st, 1881	28.79	29.02
Percentage of gross expenses to gross earnings, fiscal year ending July 31st, 1881	33.77	38.24

1575 Pullman's Palace Car Company.

Statement of Gross Earnings and Expenses for Each Division in Detail for Fiscal Year Ending July 31st, 1883.

	Chicago division.	Central division.	Erie division.
Number of cars operated.	168	220	33
Gross earnings.....	$1,043,442 49	$1,537,257 99	$184,877 50
Expenses:			
Proportion of administration expenses	42,447 56	55,456 46	8,762 22
Division salaries	7,384 96	15,196 01	3,206 61
" expenses	13,916 56	23,665 87	2,564 71
District salaries.....	29,391 97	57,454 17	7,619 68
" expenses	9,355 80	13,460 47	1,516 86
Conductors.....	83,749 62	118,955 27	17,093 73
Porters	34,605 80	42,900 75	4,549 09
Car-cleaners.....	38,087 80	42,094 11	7,605 42
Washing.....	38,423 16	44,601 55	4,611 16
Supplies, &c.....	10,733 14	15,379 79	1,355 14
Total operating expenses.....	308,096 37	429,164 45	58,884 62
Maintenance of upholstery of seats and backs, and minor betterments and repairs of cars.....	17,424 77	67,085 70	4,104 29
Maintenance of equipment	31,381 11	60,748 80	6,837 78
Gross expenses.....	356,902 25	556,998 95	69,826 69
Total net earnings	686,540 24	980,259 04	115,050 81
Gross earnings per car.	6,210 97	6,987 53	5,602 35
" expenses per car.	2,124 42	2,531 81	2,115 96
Net earnings per car...	4,086 55	4,455 72	3,486 39
Percentage of operating expenses to gross earnings	29.52	27.91	31.85
Percentage of gross expenses to gross earnings.....	34.20	36.23	37.77
Percentage of operating expenses to gross earnings, fiscal year ending July 31st, 1882	27.62	28.53	30.31
Percentage of gross expenses to gross earnings, fiscal year ending July 31st, 1882..	32.52	36.10	34.77

1576 Pullman's Palace Car Company.

Statement of Gross Earnings and Expenses for Each Division in Detail for Fiscal Year Ending July 31st, 1884.

	Chicago division.	Central division.	Erie division.
Number of cars operated	169	250	74
Gross earnings	$1,045,649 03	$1,691,967 33	$388,693 80
Expenses:			
Proportion of administration expenses	37,409 72	55,430 76	16,355 87
Division salaries	8,101 77	15,998 80	5,664 10
" expenses	16,212 28	29,417 56	9,635 72
District salaries	27,806 85	65,586 86	12,825 73
" expenses	7,502 26	12,566 72	3,154 38
Conductors	77,965 94	138,792 54	37,945 03
Porters	34,990 86	48,903 66	17,889 94
Car-cleaners	34,991 28	48,350 15	15,562 41
Washing	31,858 29	42,829 58	8,947 58
Supplies, &c	12,517 10	16,696 54	2,888 26
Total operating expenses	289,356 35	474,573 17	130,869 02
Maintenance of upholstery of seats and backs, and minor betterments and repairs of cars	21,021 41	46,581 42	9,660 16
Maintenance of equipment	43,403 17	53,235 60	14,233 34
Gross expenses	353,780 93	574,390 19	154,762 52
Total net earnings	691,868 10	1,117,577 14	233,931 28
Gross earnings per car	6,187 27	6,767 87	5,252 62
" expenses per car	2,093 38	2,297 56	2,091 39
Net earnings per car	4,093 89	4,470 31	3,161 23
Percentage of operating expenses to gross earnings	27.67	28.05	33.67
Percentage of gross expenses to gross earnings	33.83	33.95	39.82
Percentage of operating expenses to gross earnings, fiscal year ending July 31st, 1883	29.52	27.91	31.85
Percentage of gross expenses to gross earnings, fiscal year ending July 31st, 1883	34.20	36.23	37.77

Statement of Gross Earnings and Expenses for Each Division in Detail for Fiscal Year Ending July 31st, 1885.

	Chicago division.	Central division.	Southern division.	Erie division.
Number of cars operated	181	247	102	109
Gross earnings	$981,971 20	$1,581,636 74	$562,248 40	$572,986 95
Expenses:				
Proportion of administration expenses	38,015 55	51,951 42	21,415 42	22,976 95
Division salaries }	34,833 44	42,259 24	17,740 55	19,172 07
" expenses }				
District salaries	27,837 89	69,510 10	16,323 54	17,469 14
" expenses	7,070 03	13,875 94	6,157 08	3,722 83
Conductors	83,349 78	133,474 77	55,644 33	50,977 22
Porters	39,152 01	47.091 09	19,578 77	23,969 74
Car-cleaners	41,078 23	48,424 39	9,998 75	21,636 81
Washing	31,621 76	40,220 65	18,516 56	13,673 55
Supplies, &c	6,305 35	7,964 20	3,334 72	3,734 57
Total operating expenses	309,264 04	454,771 80	168,709 72	177,332 88
Maintenance of upholstery of seats and backs, and minor betterments and repairs of cars	27,899 32	21,801 60	7,066 63	8,157 10
Maintenance of equipment	45,582 56	81,719 38	26,874 76	23,083 95
Gross expenses	382,745 92	558,292 78	202,651 11	208,573 93
Total net earnings	599,225 28	1,023,343 96	359,597 29	364,413 02
Gross earnings per car	5,425 25	6,403 39	5,512 24	5,256 76
" expenses per car	2,114 62	2,260 29	1,986 78	1,913 52
Net earnings per car	3,310 63	4,143 10	3,525 46	3,343 24
Percentage of operating expenses to gross earnings	31.49	28.75	30.01	30.95
Percentage of gross expenses to gross earnings	38.98	35.30	36.04	36.40
Percentage of operating expenses to gross earnings, year ending July 31st, 1884	27.67	28.05	36.04	33.67
Percentage of gross expenses to gross earnings, year ending July 31st, 1884	33.83	33.95	36.04	39.82

1578 Mr. LINCOLN: The witness, Mr. Bird, now on the stand, was asked by cross-complainants' counsel yesterday to produce two papers, to the production of which we made formal objection, and which we did not produce. Reserving the objection which we yesterday noted, we consent that the witness may present those papers.

Mr. BIRD recalled.

By Mr. LINCOLN:

Q. You were asked yesterday respecting your having at hand a copy of the ledger of the Pullman Company, showing the gross earnings and gross expenses of the Central Transportation division for the period beginning January 1st, 1870, and ending March 31st, 1872. Have you that paper now before you?

A. I have; it is a copy of the ledger account as it appears in our ledger.

Q. Please produce it, in response to the request of Mr. Prichard.

(The witness here produces paper, which is marked "T. M. E., master, March 26th, 1895, No. 2.")

1579 Extract Central Transportation Company Ledger "A," page 20.

Central Transportation division.

Earnings and Expenses.

	Earnings.	Expenses.
1870.		
January	$31,946 00	$11,099 62
February	33,803 50	17,313 52
March	38,046 00	16,922 73
April	43,870 00	14,128 59
May	46,792 00	12,298 23
June	47,030 00	16,140 50
July	45,961 50	14,563 28
August	49,305 25	18,419 57
September	62,887 40	15,303 69
October	59,507 00	15,389 62
November	49,493 50	16,027 91
December	44,134 45	21,727 65
1871.		
January	38,945 75	13,799 29
February	39,333 75	14,217 09
March	53,481 75	16,690 03
April	51,447 75	17,399 86
May	53,645 75	21,308 97
June	55,838 75	18,562 52
July	52,993 25	21,874 65
August	54,065 25	16,486 36
September	75,380 75	18,102 58
October	68,941 00	18,718 08
November	54,088 85	18,073 04
December	46,909 00	20,930 22
1872.		
January	45,906 50	19,400 19
February	47,908 50	21,254 96
March	57,036 50	24,423 02
	$1,348,699 70	$470,575 77

Q. You have spoken of that as being a copy of the ledger. It appears in form not to be, literally speaking, a copy of what would be extracted from a ledger account. Please make any explanation that you may have as to its being a copy.

A. It is copied from the account which contains only gross earnings and expenses.

Q. Does that ledger account contain anything else than is shown on that paper at all, for that period?

1580 A. Nothing.

By Mr. PRICHARD:

Q. What you mean is that you have taken these figures from that ledger account, and that the ledger account contains no other figures than these? It does, however, contain a heading and dates?

A. Yes, sir.

Q. And also, I presume, a reference to the books from which these are posted?

A. Yes; references to the journal.

By Mr. LINCOLN:

Q. You were asked yesterday to produce, if you could, a statement of the earnings of the Pullman's Palace Company under the sixteen contracts mentioned in the Central Transportation Company's lease. Are you able to do so?

A. I am.

(Cross-defendant's counsel permits the witness to produce said statement, which is produced, and is marked by the master, "T. M. E., master, March 26th, 1893, No. 3.")

Statement

Showing result of the operation of sleeping cars over the territory covered by the sixteen Central Transportation contracts assigned to the Pullman's Palace Car Company from the date of such assignment, January 1st, 1870, to the expiration date of each contract.

Gross earnings	$2,912,906 49	
Gross expenses:		
Operating and maintenace	1,123,770 19	
Net earnings		$1,789,136 30
Depreciation at the rate of six per cent. per annum	$345,695 86	
Interest six per cent. per annum	345,695 86	
		691,391 72
Net earnings after deducting depreciation and interest		$1,097,744 58

1581

Statement

Showing by contracts the result of the operation to the expiration date of each contract of sleeping cars over the territory covered by the sixteen car-trust contracts which were assigned to the Pullman's Palace Car Company,

Contracts.	Expiration date.	Cars required	Gross earnings.	Gross expenses.	Net earnings.	Capital invested while operated.	Depreciation @ 6 per cent. per annum.	Interest @ 6 per cent. per annum.	Total depreciation and interest.	Net earnings after deducting depreciation and interest.
Pennsylvania	Dec. 2, 1870	14.39	$155,430 86	$45,844 64	$109,586 22	$115,965 40	$6,378 09	$6,378 09	$12,756 18	$96,830 04
Nor. Central	Jan. 24, 1874	4.19	43,094 39	30,239 52	12,854 87	24,311 78	5,925 98	5,925 98	11,851 96	1,002 91
Balto. & Ohio	Feb. 28, 1874	10.96	153,473 93	76,953 98	76,519 95	99,043 46	18,760 87	15,760 87	31,521 74	44,998 21
N. Y. & W. through line	Ap'l 12, 1874	5.98	211,154 28	48,929 53	162,224 75	34,388 25	10,316 48	10,316 48	20,632 96	141,591 79
P., Ft. W. & C	Jan. 24, 1874	15.90	379,293 90	106,259 78	273,034 12	90,771 71	22,125 60	22,125 60	44,251 20	228,782 92
C., H. & D	Dec. 30, 1882	2.89	160,103 30	70,938 51	89,164 79	32,968 90	25,715 75	25,715 75	51,431 50	37,733 29
										Loss.
Bellefontaine	Jan. 24, 1874	1.57	1,372 44	1,282 96	89 48	5,740 05	365 93	365 93	731 86	*642 38*
Mar. & Cin	Dec. 30, 1882	4.15	190,190 22	81,921 66	108, 68 56	43,328 78	28,597 00	28,597 00	57,194 00	51,074 56
										Loss
Central Ohio	"	2.08	52,843 84	40,247 01	12,596 83	21,259 34	14,031 15	14,031 15	28,062 30	*15,465* 47
Ind. & Cin	"	1.62	94,977 78	41,890 15	51,787 63	19,976 56	15,581 71	15,581 71	31,163 42	20,624 21
Onio & Miss	Dec. 24, 1878	8.04	277,969 90	125,462 95	152,506 95	72,960 64	39,398 76	39,398 76	78,797 52	73,709 43
C., C. & I. C	Dec. 30, 1882	8.37	481,611 65	192,322 34	289,289 31	89,063 35	69,469 41	69,469 41	138,938 82	150,350 49
T., H. & I	Sept. 1, 1878	2.03	86,461 61	30,276 37	56,185 24	19,148 95	9,957 46	9,957 46	19,914 92	36,270 32
Vandalia	Dec. 30, 1882	4.01	290,381 77	98,720 20	191,661 57	46,506 52	36,275 09	36,275 09	72,550 18	119,311 39
J., M. & I	"	1.09	52,108 59	25,747 72	26,360 87	10,938 05	8,531 66	8,531 66	17,063 32	9,297 55
L., C. & L	"	4.24	283,738 03	106,932 87	176,805 16	47,775 56	37,264 92	37,264 92	74,529 84	102,275 32
			$2,912,906 49	$1,123,770 19	$1,789,136 30	.....	$345,695 86	$345,695 86	$691,391 72	$1,097,744 78

1582 Q. That statement shows the earnings of sleeping cars. Does it show the earnings of any other cars than sleeping cars, such as parlor cars?

A. No, sir.

Q. They are not included in that statement?

A. They are not.

Q. There is contained in it a column in which the capital invested by the Pullman Company purports to be stated for each year. What does that column represent?

A. It represents approximately the capital invested by the Pullman Company in cars to operate the territory in question.

Q. What do you mean by approximately?

A. It is a hard thing to ascertain exactly, and, therefore, I say approximately. I might add that all the Central Transportation cars operated in the Central division during that time were considered as applicable to the territory of those sixteen contracts, and, of course, other cars required to operate must necessarily be Pullman, and the capital was ascertained in that way.

Q. The capital referred to is the capital invested in Pullman cars alone which were operated?

A. That is so.

Cross-examination.

By Mr. PRICHARD:

Q. In estimating the number of cars required for each division was the number that you took the number shown on those analytical statements for that time?

A. No, sir.

Q. It was greater, was it not?

A. Yes; for the reason that the analytical statements did not show all the cars used in each division.

1583 Q. Are there any other books or papers, except these analytical statements, in which were entered cotemporaneous records of the earnings of each division?

A. They are in the books from which this statement itself was made.

Q. Those are the analytical statement books?

A. Yes; I thought you referred to those books. We had the same information in other books.

Q. I understand that. You have books in which the varied information is contained, from which you made up the estimate of gross earnings and expenses, but have you any other book except the analytical statement book in which are entered results, namely, the amount of earnings and expenses?

A. Do you mean by divisions?

Q. I do.

A. No, sir.

Q. Have you any other books or papers of the company in which each year was entered the total gross earnings and gross expenses

of the entire company, other than your statement which was prepared at the end of the year for publication?

A. I think it is found in our general ledgers at that time.

Q. In what account would that be?

A. I do not know, going back as far as that.

Q. You meant that the various items from which you made up the gross earnings and gross expenses are contained in your ledgers, do you not?

A. They certainly are, in some form.

Q. But is there any book or paper, other than the general balance-sheet which you prepared for publication to your stockholders, in which was entered the totals of the gross earnings and expenses for your entire company?

1584

A. I should say they would be found in the general ledger; but I am not very familiar with that.

Q. In any one account?

A. I think not.

Q. Then the total gross earnings and expenses, or aggregate sum, only appears in your published statements, does it not?

A. Yes, sir.

Q. On page 598 of the testimony of the complainant, Mr. Burry, one of the counsel for the Pullman Company, stated, in answer to a call made upon him:

"I produce the old contract assigned by the defendant to the complainant for the operation of sleeping cars upon the Cincinnati, Indianapolis, St. Louis and Chicago railroad, stating that it is the only written contract that we have with the road. We are still operating under the provisions of it, with certain parol modifications, the only one of importance being that we no longer get any mileage."

This statement was apparently made on December 3d, 1887. Please look at your statement, which you have produced this morning, and state when you say, in that statement, you ceased to operate the road under the contract.

A. To the best of my memory it was then called the Indianapolis and Cincinnati, and the contract mentioned expired December 30th, 1882.

Q. How do you reconcile that statement with the statement of your counsel, which I observe was made after a day's reflection upon the call?

A. I can only say that the statement is made to the date of the expiration, as provided for in the contract.

1585

Q. Then may I take it that, in making up this statement, you assumed that when a contract was for a definite time roads were no longer operated under it after the expiration of the time?

A. That was my understanding of it.

Q. Did you make any investigation to find out whether, either without a definite renewal or with a definite renewal, the Pullman Company continued to operate cars on lines covered by the contract in accordance with the terms of the contract?

A. I did not. I was told simply to make the statements to the date of expiration of the contract.

Q. Then you followed instructions in making up this statement?

A. Yes, sir.

Q. By whom were those instructions given you?

A. By counsel. That is, they gave me the dates of the expiration of the contracts.

Q. Then these expiration dates were furnished to you by counsel?

A. Yes, sir.

Q. The main line of the Central division and the most important line in the division is the Pennsylvania railroad, is it not?

A. I should say that it was; yes, sir.

Q. You have not included in this statement any earnings made on that line after December 2d, 1870, have you?

A. I have not, that being the date of the expiration of the contract.

Q. You were instructed only to ascertain the earnings up to that date?

A. That is right.

Q. I show you copy, annexed to the answer of the Pull-
1586 man's Palace Car Company, of the contract between the Central Transportation Company, or its assignors, and the Pennsylvania Railroad Company, and ask you where you find in that contract any warrant for the statement which you have placed upon the statement produced by you that the contract expired December 2d, 1870?

(Objected to, on the ground that the contract speaks for itself.)

A. My understanding is that the contract terminates at the expiration of certain patents.

Q. What patents?

A. I think they are called the Woodruff patents.

Q. Did they expire December 2d, 1870?

A. Personally I have no knowledge of the matter. I have been told so.

Q. Who told you those patents expired December 2d, 1870?

A. Counsel for the Pullman Company.

Q. Do you know whether, on December 1st, 1870, immediately prior to the date which you have put down here as the expiration date of the Pennsylvania Railroad contract, the Pullman's Palace Car Company were operating that line under the contract which I have just shown you?

A. They were not.

Q. Under what contract were they operating?

A. Under a contract made between the Pennsylvania Railroad Company and Pullman's Palace Car Company.

Q. When was it made?

A. I think in the latter part of January, 1870.

Q. It was negotiated at the time the lease of the Central Transportation Company was negotiated, was it not?

A. That I don't know.

1587 Q. But it was cotemporaneous with it, was it not?

A. It was just about that time.

Q. Why, if after January, 1870, Pullman's Palace Car Company were operating their line over the Pennsylvania railroad, under a contract made in January, 1870, did you make a statement of earnings which purports to give earnings under the old contract of the Central Transportation Company down to December 2d, 1870?

A. The statement purports to give the earnings of the territory covered by the sixteen contracts to the expiration dates in such contracts.

Q. So that this statement does not purport to be the earnings made by the Pullman Company by the operating of lines under the Central Transportation Company's contracts, but only the earnings of certain territory down to dates which were given to you by counsel as the expiration dates of the Central Transportation Company's contracts?

A. That is right.

Q. And in making this up you paid no attention to the fact, if such fact existed, that as to some of the contracts, they had been canceled by Pullman's Palace Car Company prior to this date that you call the expiration date, and that as to some others the contract had been renewed, either by writing or by parol, to a date subsequent to the date which you call the expiration date?

A. No attention was paid to the fact that certain contracts had been superseded by others made with the Pullman's Palace Car Company, but I was not aware that any contracts had been renewed. In some cases new contracts had been made.

1588 Q. Have I not just called your attention to Mr. Burry's statement as to one of the roads, that in 1887 it was being operated under the old contract, that being a date long subsequent to the date which you have given as the expiration date?

A. That is true, but I think you should remember that you are asking me about the making of this statement. I had no knowledge of what you have just read to me until you read it to me.

Q. I notice that on this statement produced by you you have a column headed, "Depreciation, six per cent. per annum." I ask you whether, in any of your annual statements of earnings and expenses and net earnings made to your stockholders, you have ever included such an item?

(Objected to as immaterial and incompetent. Objection sustained.)

Q. Is there any charge on any of your books between 1870 and 1885 of six per cent. depreciation on property?

(Objected to as incompetent and immaterial. Question withdrawn.)

Q. Do any of the figures on this statement which has been produced by you appear on your books?

A. These figures themselves do not appear upon our books.

Q. What figures appear on your books from which you have

taken the figures in the column headed "Depreciation, six per cent. per annum"?

A. Those figures are simply matter of calculation upon capital invested by the Pullman's Palace Car Company in operating these contracts.

(Question repeated.)

A. There are no such figures.

Q. Have you the calculations which show the method of making up this statement?

1589 A. They are obtainable.

Q. Have you them in town?

A. I have part of them; I am not sure that I have all of them.

Q. I will ask you to produce all that you have. Who told you, in making up these statements, to deduct a depreciation of six per cent. per annum? Did you obtain that figure of six per cent. per annum from anything in your books, or was it by reason of instructions from others, outside of your books?

A. Instructions.

Q. From whom?

A. From counsel of Pullman's Palace Car Company.

Q. In taking the number of cars which you assumed in making up this statement, did you take that number from any specific entry on your books?

A. From no specific entry, but from information in the books.

Q. What was the total number of cars which you assumed by that statement to be required for the operation of the Central Transportation Company's lines, under the Central Transportation Company contracts?

A. Those shown for each contract.

Q. Please add them up and give me the total.

(Question withdrawn.)

Q. Please add up the column on your statement headed "Cars required," and state as far as you can from it what was the average number of cars required, or which, by that statement, you assumed to be required, to operate the Central Transportation lines in the year 1870?

A. The footing of the column to which you refer is ninety and fifty-one hundredths.

1590 Q. How did you make the calculations for each road in that column?

A. I first obtained from our books the actual number of days' services, whether active, idle, or shoppage, of every sleeping car operated in the Central division. That gave the maximum number of cars used for each period. This was done for each year for which such figures were obtainable. I next analyzed the lines operated in the Central division for that same period, and ascertained from my general knowledge of cars required to operate the lines, the minimum number of cars required to operate each line. To that minimum number required I added the difference between the minimum number and the maximum number in the division.

Then, in order to ascertain the number of cars required for each particular contract, I grouped all lines operated over territory covered by the contract; and in case any of such lines were operated jointly over such territory and other territory, I prorated the cars on the basis of mileage of such lines. In that way I obtained the minimum number of cars required to operate the territory covered by each of the contracts, and to such minimum number I added the percentage of the difference between the minimum and maximum number of the whole division. The percentage shown by the difference between the minimum and maximum number of the whole division is applicable to the minimum number of any particular one line, two lines, or six lines covered by any one contract.

Q. Why did you go to the trouble of making such an elaborate calculation, when you had in your analytical statement information prepared for your own officers, giving the average number of cars in each division?

1591 A. The analytical statement does not give the number of cars in each division. It gives simply each month the number of cars earning ten dollars and upwards. It does not include a large number of cars which would be held for protective services during each month, or which might be in the shops, which really belonged and were assigned to the various divisions. The number of cars shown in the analytical statement would be very much nearer the minimum number required to operate the line than the maximum.

I would like to add that analytical statements are statements really only for the auditor's office, as matter of convenience. They are not public statements, and are never published. If a car is used and does not earn ten dollars it is not counted; and if it is not used at all it is not counted. Of course if it is in the shop it is not counted. We do not deal with those.

Q. How do you reconcile your statement of ninety cars with the facts which appeared in evidence in this case, that the Central Transportation Company had one hundred and nineteen cars, and that at the time of the lease it was believed by both parties necessary to have an increased number of cars to carry on the business?

A. I would again call your attention to the fact that this does not pretend to give the result of the operation of the entire Central division at that time, but merely of the territory absolutely covered by the sixteen contracts.

Q. But the sixteen contracts covered the entire territory operated by the Central Transportation Company at the time of the lease, did they not?

A. Not as I understand it.

1592 Q. What other territory was there not included in the sixteen contracts?

A. I do not understand that in the sixteen contracts, for example, would be found the territory of the United Railroads of New Jersey, the Philadelphia and Erie, the Philadelphia, Wilmington and Baltimore, excepting in one limited contract known as, I think, the New York and Washington air line. The Baltimore and Potomac is

not included, nor the Alexandria and Fredericksburg. There are also others.

Q. Were all those lines that you have mentioned operated at the time of the lease, in January, 1870?

A. They were not. The Baltimore and Potomac was not built until 1872.

Q. My question was whether the sixteen contracts did not cover the entire territory of the Central Transportation Company operated at the time of the lease. The railroads which you have just mentioned were not operated at the time of the lease, and not until long afterwards, were they?

A. Some of them were. I think the Baltimore and Potomac, and the Alexandria and Fredericksburg are the only two that I have mentioned, so far, that were not in existence at that time.

Q. Please state now specifically what lines, according to your recollection, were operated by the Central Transportation Company at the time of the lease that are not covered by the sixteen contracts?

The MASTER (interposing): Please explain what you mean by lines and what you mean by territory.

A. The word "line" or "lines" has this meaning in the Pullman's Palace Car Company: It means a line of sleeping cars run between two given points. The word "territory" may in-
1593 clude any number of lines. It is more general than the word "lines." When we say a line, we do not mean all the operated cars over any territory, unless there is but one so-called line. When we say territory, we mean all lines operated on any particular territory.

Q. Then territory is really the larger word—it includes all the lines?

A. Yes, sir.

Mr. PRICHARD: Then I will let my question stand as it was first put.

The WITNESS: From memory I cannot give the lines.

By Mr. LINCOLN:

Q. Do you not mean by territory any given railroad?

A. Yes.

The MASTER: It is not yet clear to my mind what is meant by the two words "territory and "line." Please state that exactly.

The WITNESS: I will illustrate. Take a small railroad, for illustration. Take the Allegheny Valley road. If you ask me about the territory of the Allegheny Valley, it will include the entire Allegheny Valley. If you ask me for the lines of the Allegheny Valley, there might be four or five different lines, as the word is used in the Pullman Company.

By Mr. WINTERSTEEN:

Q. Do you mean anything more by "line" than the time at which trains start from a point and get to their destination?

A. I line is established after consultation between the railroad company and the Pullman's Palace Car Company. It means sleeping cars which run from one point to another and return, on
1594 certain trains. That is called a line, and I might add that for convenience such lines are given numbers.

By Mr. PRICHARD:

Q. State as nearly as you can over what railroads the Central Transportation Company were operating cars at the time of the lease, the rights over which were not given to it by the sixteen contracts?

A. My answer, of course, will be entirely from memory. The United Railroads of New Jersey; the Philadelphia, Wilmington and Baltimore, excepting under a limited contract called the New York and Washington through line; the Philadelphia and Erie; the Pittsburgh, Cincinnati and St. Louis, and the Little Miami. There may be others which I might include if I was at liberty to look the matter up.

Q. Then, as I understand you, the Central Transportation Company turned over to the Pullman's Palace Car Company on or about January or February, 1870, in addition to those contracts, certain lines which had been instituted over these railroads which you have named, but as to which, so far as you know, there existed no written contracts?

(Objected to as matter of law.

In order to avoid discussion upon the objection raised by Mr. Lincoln, Mr. Prichard states that he will agree that the witness in answering this question may confine himself to telling what happened with regard to those roads upon the making of the lease.)

The WITNESS: That question is not very clear to me.

By Mr. PRICHARD:

Q. As I understand you, at the time of the lease the Cen-
1595 tral Transportation Company were running cars over certain railroads with regard to which the right to run cars was not given by these sixteen contracts?

A. That is my understanding.

Q. Upon the execution of this lease was the business of operating cars over those roads continued, and if so, by whom?

A. It was continued by the Pullman's Palace Car Company, as I understand it, under a new contract made with the Pennsylvania Railroad Company, which covered the territory that I have mentioned.

Q. That is the new contract to which you have alluded as being made about cotemporaneously with the lease, is it not?

A. Yes, sir.

Q. You have not included the earnings derived from the operations of cars over those railroads in this statement which you have produced?

A. I have not. The statement includes simply the territory over

which we could, as I understand it, by the contracts, enforce operation.

Q. After December 2d, 1870, the date which you give in this statement as the expiration date of the contract with the Pennsylvania railroad, you continued to use Central Transportation cars to some extent on the Pennsylvania railroad, did you not?

A. Yes; that is a fact.

Q. I may assume, may I not, that that is a fact with regard to these other railroads that you have given the expiration dates of?

A. To an extent; of course, the Central Transportation cars gradually dropped off.

Q. This statement does not include earnings made by the use of Central Transportation Company cars on any of these rail-
1596 roads after the date which you have here stated as the expiration date of the contracts with those roads?

A. It does not. The statement gives the earnings of the territory for the time specified in each case made by all sleeping cars, but, as you say, it does not include earnings made by any Central Transportation cars after the date given as the date of expiration.

Redirect examination.

By Mr. LINCOLN:

Q. You have said that the figures in the column marked "depreciation" do not appear in the books of account of the Pullman Company. State whether or not the figures given for the capital employed appear in the books of the Pullman Company.

A. They appear in the form of so much money invested in each car.

Q. Mr. Prichard, in calling your attention to the fact that you made the total number of cars employed in the first year to be about ninety and fifty-hundredths, asked you how you reconciled that with the fact that there were one hundred and nineteen Central Transportation Company cars. Do you know how many Central Transportation Company cars there were at the beginning of this assumption of business by the Pullman Company, in fact?

A. To the best of my knowledge, there were in the neighborhood of half a dozen that were wholly destroyed and out of service before January 1st, 1870, and others dropped off rapidly immediately after that time.

By Mr. PRICHARD:

Q. In order to ascertain the capital, you added up the amount invested in each car?

1597 A. I will explain how I arrived at those figures. As explained before, I had already obtained the exact days' service of every particular car in the Central division. Of course, that gave me an identification of the car. Now, for every Pullman's Palace Car Company car, I obtained the cost. I was, therefore, in position to give an average cost for each Pullman's Palace Car Company car in the Central division in any year. That average I applied to the

number of Pullman's Palace Car Company cars necessary, in addition to the Central Transportation cars, to operate any particular territory.

Q. And of course, before you struck the average of the cost, you deducted from the cost of each car depreciation at six per cent. per annum, from the date when it was built to the period for which you wanted the average, did you not?

A. The depreciation was deducted afterwards, in making up the statement.

Q. In estimating the amount of capital employed in 1870, for instance, did you not deduct six per cent. depreciation, from the date of the construction of the car down to 1870?

A. No, sir.

Q. Suppose these Pullman cars had been constructed ten years before, did you estimate their value on the amount of capital employed in 1870 by their cost at the time of construction?

A. I did. I would add that the Pullman cars which did that work were new cars.

Q. All of them?

A. Practically every one built, displacing old cars which were unfit for service.

1598 Q. Are you quite sure of that fact?

A. Yes, sir.

Q. I will ask you to give me the dates of those cars.

A. I did not say every one. I could not say that, but I say practically.

Q. What do you mean by practically?

A. The majority.

Q. In those that were not new cars, did you deduct six per cent. depreciation down to 1870?

A. We did not. We took the original cost of the car.

Q. You did not assume that they had depreciated six per cent. a year from the time they were constructed down to 1870?

A. No, sir.

Adjourned.

TUESDAY, *April 2d*, 1895—4 p. m.

Present: The master, Mr. Etting: Messrs. Johnson and Prichard, for cross-complainants; Messrs. Isham and Lincoln and Mr. Wintersteen, for cross-defendants.

The master stated that he had received from the witness, Mr. Robertson, a letter with certain written statements as enclosures, sent by him to complete his testimony in the cause. In accordance with the understanding between the parties, and by consent of counsel, the said statements are put in the notes to be taken as a part of Mr. Robertson's testimony.

The said letter and statements are as follows:

1599 Pullman's Palace Car Company.

Accounting department, office of the auditor.

F. C. N. Robertson, auditor; Jas. F. Bird, first ass't auditor; W. P. Hoornbeek, second ass't auditor.

CHICAGO, *March 30th*, 1895.

Theodore M. Etting, Esq., special master.

SIR: As I understand that it has been arranged that the completion of my examination as a witness in the cause pending before you between the Central Transportation Company and Pullman's Palace Car Company may be made by statements made to you in writing by me, I have the honor to send to you herein inclosed such statements signed by me as will I think complete my evidence. I have the honor to be,

Your obedient servant,

F. C. N. ROBERTSON, *Auditor.*

Explanation of the discrepancies as to amounts received for Central Transportation Company cars Nos. 4, 25, 85, and 26, 28, 31, 33, 45, 46, 61, 62, 63, 64, 116, and 36, 37, 53, 54, 103, and 76 and 115, as given respectively by the exhibit to the answer by Mr. Goodman and by me.

A comparison of the exhibit to the answer with my statement in evidence shows that the exhibit gives as to any car only what I give as received for the "car" and not for the "equipment," and with this explanation those two statements agree exactly as to all cars, except as to cars 76 and 115, as to which a separate explanation is made.

1600 The books show that cars 36, 37, 53, 54, and 103 were operated upon the Ohio and Mississippi railway, and that in settling for repairs and maintenance due upon them by the railway, the railway built two cars costing $19,982.51 for both, to replace cars 37 and 53, and paid $12,000 for Nos. 36, 54, and 103. These are the figures shown by the exhibit and also by me, I adding to car 37 the collection for some equipment, $470.65. Mr. Goodman seems to have known of the total amount ($31,982.51) creditable to the cars, and to have assigned, in testifying, $6,000 of that sum to each of the cars 36, 37, 53, and 54, and the remainder, $7,982.51, to car 103, then adding the $470.65 equipment item to its car No. 37. The report of his testimony omits the odd cents; restoring them, his total for the five cars is exactly as mine.

	Exhibit to answer.	Goodman.	Robertson.
Car 36	$4,000 00	$6,000 00	$4,000 00
" 37	9,991 25	6,470[65]	9,991 25
			470 65 eq't.
" 53	9,991 26	6,000 00	9,991 26
" 54	4,000 00	6,000 00	4,000 00
" 103	4,000 00	7,982[51]	4,000 00
Omitted equipment	470 65		
	$32,453 16	$32,453 16	$32,453 16

From this it is seen that the discrepancy as to the five cars arises from Mr. Goodman having made a distribution of the aggregate collections on their account differing from that made by the accounting department.

As to cars 76 and 115, they and their equipment were destroyed in the Pittsburgh riots, together with three Pullman cars and their and other equipment.

1601 A claim was presented to Allegheny county for the sum of $76,211.72, which was compromised for the sum of $55,000; of this amount there was credited on the Pullman books for the two Central Transportation cars as follows:

Car 76	$6,495 06
" 76, equipment	1,326 91
Car 115	6,495 07
" 115, equipment	1,208 18

There was also a prior debit to car 76 for repairs, $454.56.

Mr. Goodman seems to have used these figures as follows:

Total cars and equipments, 76 and 115	$15,525 22
One-half for car 76	$7,762 61
Less repair charge	454 56
Credit for No. 76	$7,30[8 05] *
One-half for No. 115	7,762[61] *
	$15,070 66

* Figures bracketed omitted in report of evidence.

My statement gives the same aggregate as follows:

Car 76	$6,495 06
" equipment	1,326 91
	$7,821 97
Less repair charge	454 56
	$7,367 41
Car 115	6,495 07
" equipment	1,208 18
	$15,070 66

As already stated, the figures shown in the exhibit to the answer did not include any amounts received for equipment of cars. For the exhibit some distribution of the total amount received for these two cars and equipments was made, the basis of which can-
1602 not now be perceived. This distribution increased in the exhibit the amount received for the cars, and must necessarily have diminished equally the figures for the equipment unstated in the exhibit.

With respect to cars 4 and 25, Mr. Goodman seems to have added the equipment to the amounts received for the cars, using, however, round sums instead of the exact amounts. Thus he has added $1,000 to car 4, instead of $1,067.66, and to car 25, $500 instead of $768.80. As to car 85 he again seems to have used a round sum instead of the exact amount, omitting the odd $82.76.

With respect to cars 26, 28, 31, 33, 45, 46, 61, 62, 63, 64, and 116, Mr. Goodman has included in the amount received for each car the $3,000 received in lieu of repairs to each car, while in my statement this latter amount is shown opposite each car, in the column provided for that purpose. In this connection I may say that the exhibit to the answer gives only the amount received for each of the ten cars that were sold to the Baltimore and Ohio Railroad Company (viz., $1,000 each); but does not, nor was it intended to, show the amount received in lieu of repairs to each car.

With further reference to car 45, Mr. Goodman's figures include $737. This seems to have been intended for the equipment, which, however, amounted to $787.15, as shown in my statement.

F. C. N. ROBERTSON, *Auditor*,

Pullman's Palace Car Company, auditor's office, March 30th, 1895, accounting department.

1603 *Original Cost of Pullman Sleeping Cars Operated in the Central Transportation Division Before April, 1872.*

Name.	Date built.	Built by or purchased from—	Cost of cars.	Cost of equipment.	Total.
Altoona	Sept., 1870	P. R. R. Co	$13,215 49	$1,201 47	$16 414 96
Alliance	Feb., 1871	P., Ft. W. & C. R'y Co	16,716 25	1,276 03	17,922 28
Altamont	Dec., "	B. & O. R. R. Co			15,426 27
Allegheny	Feb., 1872	P. R. R. Co	14,713 51	1,201 46	15,914 97
Arlington	July, 1870	C., B. & Q. R. R. Co	15,556 66	2,503 66	18,060 32
Baltimore	Sept., "	J. & S. Co	14,585 27	1,375 66	15,960 93
Berlin	Feb., 1871	B. & S. Mfg. Co	14,370 23	1,546 08	15,916 31
Bellaire	June, "	B. & O. R. R. Co			16,460 93
Brocton	Oct., 1870	Detroit C. & M. Co	16,995 00	1,434 44	18,429 44
Bristol	Jan., 1872	Harlan & H. Co	16,150 62	1,276 58	17,427 20
Crestline	Aug., 1870	P., Ft. W. & C. R'y Co	15,718 78	1,276 03	16,994 81
Cresson	Aug., "	P. R. R. Co	15,213 49	1,201 46	16,414 95
China	Oct., "	H. Hull (Fond du Lac)	13,952 13	1,300 30	15,252 43
Canton	Dec., "	P., W. & B. R. R. Co	14,811 25	1,572 41	16,383 66
Chester	" "	"	14,811 25	1,572 41	16,383 66
Cambria	Jan., 1871	P. R. R. Co	15,213 49	1,201 46	16,414 95
Cincinnati	July, "	B. & O. R. R. Co			16,460 93
Connellsville	Sept., "	H. & H. Mfg. Co	14,585 27	1,375 66	15,996 93
Comet	1868	G. M. P	8,194 99	1,180 26	9,375 25
Cumberland	Nov., 1871	B. & O. R. R. Co			15,426 27
Conestoga	Feb., 1872	P. R. R. Co	14,713 00	1,201 46	15,914 46
Decatur	" 1871	T., W. & W. R. R. Co	14,270 45	1,401 78	15,672 23
Danville	May, "	"	14,270 45	1,401 78	15,672 23
Dexter	1870	B. & S. Mfg. Co	17,243 67	1,425 32	18,668 99
Erie	May, 1871	P. & E. R'y Co	13,676 24	1,377 47	15,053 71
Ft. Wayne	Aug., 1870	P., Ft. W. & C. R'y Co	15,718 78	1,276 03	16,994 81
Frederick	Jan., 1871	J. & S. Co	14,585 27	1,375 66	15,960 93
Grafton	Nov., 1870	"	14,585 27	1,375 66	15,960 93
Greenwood	Jan., 1872	B. & O. R. R. Co			15,426 27
Highland	Feb., 1871	P. R. R. Co	15,213 49	1,201 46	16,414 95
Harrisburg	April, "	"	15,213 49	1,201 46	16,414 95
Huron	1870	B. & S. Mfg. Co	17,243 58	1,988 10	19,231 78
Ivanhoe	March, "	P., Ft. W. & C. R'y Co	19,630 05	2,098 91	21,728 96
Ionis	Oct., "	H. & H. Co	14,544 42	1,341 96	15,886 38
Juniata	Sept., "	P. R. R. Co	15,213 49	1,201 47	16,414 96
Japan	Oct., "	C. & N. W. R. R. Co	13,952 13	1,300 29	15,252 42
Kensington	Feb., 1871	P., W. & B. R. R. Co	14,811 25	1,572 42	16,383 67
Kentucky	Oct., "	P. R. R. Co	14,213 49	1,201 46	15,414 95
Knoxville	Nov., "	H. & H. Co	16,150 63	1,276 58	17,427 21
Kingwood	Jan., 1872	B. & O. R. R. Co			15,426 27
Lammermoor	Aug., 1870	P. R. R. Co	15,934 62	1,249 62	17,184 24
Ligonier	Jan., 1871	"	15,213 49	1,201 47	16,414 96
Lancaster	May, "	"	15,213 49	1,201 47	16,414 96
Licking	Sept., "	"	14,713 48	1,201 47	15,914 95
Louisville	Oct., "	"	14,213 49	1,201 47	15,414 96
Melrose	Aug., 1870	"	16,414 18	1,617 87	18,032 05
Mantua	Nov., "	"	15,213 49	1,201 47	16,414 96
1604 Miami	June, 1871	P. R. R. Co	14,713 48	1,201 47	15,914 95
Mt. Clare	" "	B. & O. R. R. Co			16,460 93
Marietta	Aug., "	"			16,460 93
Mansfield	Nov., "	P., Ft W. & C. R'y Co	11,612 60	1,713 81	14,326 41
Massillon	" "	"	11,612 60	1,713 81	13,326 41
Martinsburg	Dec., "	B. & O. R. R. Co			15,426 27
Marquette	Sept., 1870	H. & St. J. R'y Co	16,018 36	1,631 34	17,649 70
Newark	" 1871	P. R. R. Co	14,713 48	1,201 46	15,914 94
Ohio	Nov., 1869	P., Ft. W. & C. R'y Co			16,606 29
Oakland	" 1870	J. & S. Co	14,585 27	1,375 66	15,960 93
Pennsylvania	" 1869	P., Ft. W. & C. R'y Co			16,606 30
Promontory	" "	"			16,606 31
Persia	Oct., 1870	C. & N. W. R'y Co	13,952 14	1,300 30	15,252 44
Princeton	Dec., "	P., W. & B. R. R. Co	14,811 25	1,572 42	16,383 67
Potomac	Jan., 1871	J. & S. Co	14,585 27	1,375 66	15,960 93
Plymouth	" "	P., Ft. W. & C. R'y Co	16,716 26	1,276 03	17,992 29
Paris	Feb, "	B. & S. Mfg. Co	14,370 24	1,546 08	15,916 32
Piedmont	July, "	B. & O. R. R. Co			16,460 93
Pittsburgh	Oct., "	H. & H. Mfg. Co	14,585 27	1,375 66	15,960 93
Parkersburg	Nov., "	B. & O. R. R. Co			15,426 27
Planet	Dec., "	G. M. P	8,178 19	1,181 36	9,359 55
Renovo	May, "	P. & E. R'y Co	13,676 25	1,377 46	15,053 71
Rosedale	Dec., "	H. & St. J. R. R Co	14,837 26	1,352 90	16,190 16
Scotia	Oct., 1870	C. & N. W. R'y Co	13,952 14	1,300 29	15,252 43
Saranac	" "	H. & H. Co	14,544 42	1,341 96	15,886 38
Scioto	July, 1871	P. R. R. Co	14,713 48	1,201 46	15,914 94
Sarnia	1870	B. & S. Mfg. Co	17,243 68	1,988 11	19,231 79
Tyrone	Oct., "	P. R. R. Co	15,213 49	1,201 46	16,414 95
Toledo	Nov., "	T., W. & W. R. R. Co	14,270 44	1,401 79	15,672 23
Trenton	Dec., "	P., W. & B. R. R. Co	14,811 24	1,572 41	16,383 65

Original Cost of Pullman Sleeping Cars, &c.—Continued.

Name.	Date built.	Built by or purchased from—	Cost of cars.	Cost of equipment.	Total.
Tolono	Feb., 1871	T., W. & W. R. R. Co	$14,270 45	$1,401 78	$15,672 23
Conemaugh (Titusville)	" "	P. R. R. Co	15,213 49	1,201 46	16,414 95
Tuscarora	Aug., "	"	14,713 48	1,201 46	15,914 94
Vandalia	Nov., 1870	"	15,213 49	1,201 46	16,414 95
Virginia	Aug., 1871	B. & O. R. R. Co			16,460 93
Wahsatch	Nov., 1869	P., Ft. W. & C. R'y Co			16,608 29
Waverly	March, 1870	"	19,630 06	2,098 91	21,728 97
Wheeling	Sept., "	J. & S. Co	14,585 27	1,375 66	15,960 93
Westerly	Nov., "	C., B. & Q. R. R. Co	16,062 04	1,599 35	17,661 39
Westfield	Oct., "	Detroit C. & M. Co	16,995 00	1,434 44	18,429 44
Wabash	Nov., "	T., W. & W. R. R. Co	14,270 44	1,401 78	15,672 22
Wilmington	Feb., 1871	P., W. & B. R. R. Co	14,811 24	1,572 42	16,383 66
Wayne	1870	B. & S. Mfg. Co	17,243 67	1,425 32	18,668 99
Xenia	July, 1871	P. R. R. Co	14,713 48	1,201 46	15,914 94

F. C. N. ROBERTSON, *Auditor.*

Pullman's Palace Car Company, auditor's office, March 30th, 1895, accounting department.

1605 Pullman's Palace Car Company.

Statement of Central Transportation Cars Not Found in the Central Transportation Car Account.

No.	Sold to or settled by—	Date of settlement.	Am't rec'd in settlement— Of cars.	Am't rec'd in settlement— Of equip't.	Received in lieu of repairs.	Expended in repairs.
22	Penna. R. R	6, 7, '79			$4,000 00	
23	P., Ft. W. & C	6, 13, '82			5,406 56	
30	Penna. R. R	10, 16, '79			4,000 00	
38	"	"			4,000 00	
65	"	"			4,000 00	
71	"	"			4,000 00	
83	Court (B. & O.)	6, 10, '82	$7,000 00			
84	"	"	6,750 00			
86	P., Ft. W. & C	6, 13, '82			5,406 56	
87	Penna. R. R	10, 16, '79			4,000 00	
88	"	"			4,000 00	
89	"	"			4,000 00	
91	"	6, 7, '79			4,000 00	
93	"	"			4,000 00	
94	"	10, 17, '79			4,000 00	
95	"	7, 23, '79			4,000 00	
96	"	10, 17, '79			4,000 00	
97	"	7, 23, '79			4,000 00	
98	"	10, 17, '79			4,000 00	
106	C., H. & D. and	9, 20, '78			3,500 00	
107	P., C. & St. L	"			3,500 00	
110	Penna. R. R	10, 17, '79			4,000 00	
111	"	"			4,000 00	
112	"	"			4,000 00	
113	"	"			4,000 00	
114	"	"			4,000 00	
119	"	7, 23, '79			4,000 00	
			$13,750 00		$101,813 12	

Recapitulation.

Amount received in settlement of cars	$13,750 00
" " lieu of repairs	101,813 12
	$115,563 12

F. C. N. ROBERTSON, *Auditor.*

Pullman's Palace Car Company, auditor's office, March 30th, 1895, accounting department.

1873.	Dr.			
July 31.	To bal. to ledger H	284..		$384,973 25
				$384,973 25
1874.				
July 31.	To Ala. Cen. R. R. J¹ H¹	348..		$1,398 43
"	To construct'n and rebl'd'g cars J¹ H¹	409..		66,498 06
"	To bal. to ledger J	339..		339,345 67
				$407,242 16
1874.				
Oct. 27.	To extra trucks, &c. J¹ J¹	71..		$500 00

1872.	Cr.			
Dec. 31.	By P. R. R. Co. H	39..		$133,000 00
"	" Cen. Trs. Co.	41..		102,043 22
1873.				
Jan. 25.	" Central Trans. Co. G	265..		276 00
Jan. 27.	" P., Ft. W. & C. R. R. Co.	266..		14,000 00
" 31.	" P., C. & St. L. R. R. Co.	278..		14,000 00
" 31.	" P., C. & St. L. R. R. Co.	295..		8,000 00
Feb. 28.	" P. & E. R. R. H	102..		7,000 00
Ap'l 28.	" P. R. R. Co.	154..		7,000 00
" 30.	" B. & O. R. R. Co.	190..		36,000 00
" 30.	" B. & O. R. R. Co.	190..		7,000 00
May 3.	" Cin., Ham. & Day. R. R. G	371..		8,000 00
June 13.	" B. & O. R. R. H	204..		2,000 00
" 30.	" P., Ft. W. & C. R'y	247..		14,000 00
" 30.	" equip. suspense	261..		1,674 19
July 31.	" sundries G	541..		16,787 15
" 31.	" P., Ft. W. & C. R. R. Co.	546..		14,000 00
" 31.	" P. R. R. Co.	552..		192 69
				$384,973 25
1873.				
Aug. 1.	By balance from ledger G			$384,973 25
Sep. 30.	" storekeeper	47..		268 91
1874.				
July 31.	" wr. & dest. cars J¹ H¹	409..		22,000 00
				$407,242 16
1874.				
Aug. 1.	By balance from ledger H			$339,345 67

1875.				
July 31.	To construct'n and rebuilding J^2	430..		6,085 91
"	To bal. to ledger K	250..		375,013 68
				$381,599 59
1607				
1875.				
Oct. 31.	To P., C. & St. L. R. R. J^1 K^1	87..		$2,000 00
1876.				
July 31.	To bal. to ledger L	260..		401,013 68
				$403,013 68
1877.				
July 31.	To bal. to ledger M	238..		$419,013 68
				$419,013 68
1880.				
July 31.	To Penna. R. R. Co., O^2	334..		$18,000 00
" 31.	To Allegheny Co., O^2	336..		5,009 87
" 31.	To bal. to ledger P			419,003 81
				$442,013 68
1881.				
July 31.	To bal. to ledger Q	234..		$423,156 80
				$423,156 80

1875.				
Feb. 28.	" P. R. R. (for car No. 90) J^1	202..		7,000 00
Mar. 31.	" P., Ft. W. & C. R. R. J^2	229..		14,000 00
July 31.	" O. & M. R. R. &c., J^2	387..		14,253 92
" 31.	" sundries J^2	436..		7,000 00
				$381,599 59
1875.				
Aug. 1.	By balance from ledger J			$375,013 68
Oct. 31.	" P., C. & St. L. R. R. J^1 K^1	86..		28,000 00
				$403,013 68
1876.				
Aug. 1.	By balance from ledger K			$401,013 68
1877.				
July 31.	" P. R. R. J^1 L^2	326..		18,000 00
				$419,013 68
1877.				
Aug. 1.	By balance from ledger L			$419,013 68
1880.				
July 31.	" Pitts. riots loss acc't, J^1 O^2	334..		18,000 00
" 31.	" cars sold (car 67), J^1 O^2	371..		5,000 00
				$442,013 68
1880.				
Aug 1.	By balance from ledger O			$419,003 81
1881.				
July 30.	" Cent. div. susp. P^2	414..		2,535 09
" 30.	" const'n and reb'g of cars, P^2	430..		500 00
" 30.	" W. & D. cars, P^2	434..		1,117 90
				$423,156 80

Central Transportation Company's Cars—Continued.

1882.				1881.			
July 31.	To O. & M. R. R., &c., J[1] Q[2]	468..	$13,783 27	Aug. 1.	By balance from ledger P..		$423,156 80
" 31.	To bal. to ledger R	266..	441,356 04	1882.			
				July 31.	" rec. O. & M. R. R., J[1] Q[2]	468..	31,982 51
			$455,139 31				$455,139 31
1884.				1882.			
June 30.	To S. Tr. Co'.s cars, [1]S[1]	245..	$75 00	Aug. 1.	By balance from ledger Q		$441,356 04
July 31.	To bal. to ledger T	310..	441,370 49	1883.			
				Nov. 30.	" const'n and reb'g of cars, S[2]	87..	14 45
				1884.			
				May 13.	" cash car "Mountaineer," S[3]	528..	75 00
			$441,445 49				$441,445 49
				1884.			
				Aug. 1.	By balance from ledger S		$441,370 49

Pullman's Palace Car Company, auditor's office, March 30th, 1895, accounting department.

F. C. N. ROBERTSON, *Auditor.*

1608 Pullman's Palace Car Company, accounting department.

Office of the auditor.

F. C. N. Robertson, auditor; Jas. F. Bird, first ass't auditor; W. P. Hoornbeek, second ass't auditor.

CHICAGO, *May 20th*, 1895.

Theodore M. Etting, Esq., special master.

SIR: As I have been instructed by the counsel for Pullman's Palace Car Company, that after the last testimony given by me as a witness in the case pending before you between the Central Transportation Company and Pullman's Palace Car Company, evidence was given of the extension of certain patents, upon the life of which depended the respective dates of expiration of five of the contracts assigned by the Central Transportation Company to Pullman's Palace Car Company, and that it is, in consequence, my duty to supplement the statement presented by me in evidence before you, marked by you "T. M. E., master, March 26th, 1893, No. 3," and printed at pages 1267 and 1268 of the testimony in behalf of Pullman's Palace Car Company, defendant in the cross-bill in said cause, I have prepared, and I have the honor to send you herein enclosed, to be taken as a part of my testimony as a witness in the said cause two statements signed by me entitled, respectively, as follows:

Supplemental statement, showing by contracts the result of the operation to the expiration date of each contract, of sleeping cars over the territory covered by the five Central Transportation contracts hereunder named, which were assigned to the Pullman's Palace Car Company, for the period subsequent to the expiration dates given to such contracts in the original statement heretofore given in evidence.

Consolidation of original and supplemental statements, showing by contracts the result of the operation to the expiration date of each contract, of sleeping cars over the territory covered by the 16 Central Transportation contracts which were assigned to the Pullman's Palace Car Company.

I beg to add that the said statements now enclosed have been made up upon the same principles which I explained in my testimony as having been applied in making up the original statements above mentioned, marked No. 3, excepting only as to the assumption of later dates of expiration for five of the contracts as shown.

I have the honor to be, sir,

Very respectfully, your obedient servant,

JAS. F. BIRD,
First Ass't Auditor.

1609 *Supplemental Statement Showing by Contracts*

The result of the operation to the expiration date of each contract of sleeping cars over the territory covered by the five Central Transportation Company contracts hereunder named which were assigned to the Pullman's Palace Car Company for the period subsequent to the expiration dates given to such contracts in the original statement heretofore given in evidence.

Contracts.	Period.	Cars required.	Gross earnings.	Gross expenses.	Net earnings.	Capital invested while operated.	Depreciation @ 6 per cent. per annum.	Interest @ 6 per cent. per annum.	Total depreciation and interest.	Net earnings after deducting depreciation and interest.
Pennsylvania	Dec. 2, '70 to Dec. 2, '77	37 62	$1,613,449 24	$471,126 49	$1,142,322 75	$353,853 86	$148,618 62	$148,618 62	$297,237 24	$845,085 51
Nor. Central	Jan. 24, '74 to May 31, '80	5.57	110,355 60	67,732 17	42,623 43	72,306 28	27,566 77	27,566 77	55,133 54	*12,510 11*
Balto. & Ohio	Feb. 28, '74 to Feb. 28, '81	19 26	523,384 35	248,226 80	275,157 55	251,578 72	103,147 28	103,147 28	206,294 56	68,862 99
P., Ft. W. & C	Jan. 24, '74 to May 31, '80	16.23	655,622 98	190,946 42	464,676 56	210,421 82	80,223 32	80,223 32	160,446 64	304,229 92
Bellefontaine (B. & I., I., P. & C.)	Jan. 24, '74 to May 31, '80	.87	3,591 91	4,718 60	*1,126 69*	9,674 90	1,705 20	1,705 20	3,410 40	*4,537 09*
			$2,906,404 08	$982,750 48	$1,923,653 60	.....	$361,261 19	$361,261 19	$722,522 38	$1,201,131 22

JAMES F. BIRD,
First Assistant Auditor.

Pullman's Palace Car Co., auditor's office, May 20, 1895, accounting department.

Showing by contracts the result of the operation to the expiration date of each contract of sleeping cars over the territory covered by the sixteen Central Transportation Company contracts which were assigned to the Pullman's Palace Car Company.

Contracts.	Expiration date.	Cars required.	Gross earnings.	Gross expenses.	Net earnings.	Capital invested while operated.	Depreciation @ 6 per cent. per annum.	Interest @ 6 per cent. per annum.	Total depreciation and interest.	Net earnings after deducting depreciation and interest.
Pennsylvania	Dec. 2, 1877	37.36	$1,768,880 10	$516,971 13	$1,251,908 97	$326,308 87	$154,996 71	$154,996 71	$309,993 42	$941,915 55
Nor. Central	May 31, 1880	5.03	153,449 99	97,971 69	55,478 30	53,588 42	33,492 75	33,492 75	66,985 50	*11,507 20*
Balto. & Ohio	Feb. 28, 1881	16.19	676,858 28	325,180 78	351,677 50	180,163 86	118,908 15	118,908 15	237,816 30	113,861 20
N. Y. & W. (thro' line)	Ap'l 12, 1874	5.98	211,154 28	48,929 53	162,224 75	54,388 25	10,316 48	10,316 48	20,632 96	141,591 79
P., Ft. W. & C.	May 31, 1880	16.69	1,034,916 88	297,20[illegible] 20	737,710 68	163,758 27	102,348 92	102,348 92	204,697 84	*(33,012 84*
C., H. & D.	Dec. 30, 1882	2.89	160,103 30	70,938 51	89,164 79	32,968 90	25,715 75	25,715 75	51,431 50	37,733 29
* Bellefontaine	May 31, 1880	.80	4,964 35	6,001 56	*1,037 21*	8,629 70	2,071 13	4,142 26	*6,179 47*	51,074 56
Mar. & Cinti	Dec. 30, 1882	4.15	199,190 22	81,921 66	108,268 56	43,328 78	28,597 00	28,597 00	57,194 00	*15,465 47*
Cent. Ohio	"	2.08	52,843 84	40,247 01	12,596 83	21,2[illegible] 34	14,031 15	14,031 15	28,062 30	20,624 21
Ind. & Cinti	"	1.62	93,677 78	41,890 15	51,787 63	19,976 56	15,581 71	15,581 71	31,163 42	73,709 43
Ohio & Miss.	Dec. 24, 1878	8.04	277,969 90	125,462 95	152,506 95	72,960 64	39,398 76	39,398 76	78,797 52	73,709 43
C., C. & I. C.	Dec. 30, 1882	8.37	481,611 65	192,322 34	289,289 31	89,063 35	69,469 41	69,469 41	138,938 82	150,350 49
T., H. & I.	Sept. 1, 1878	2.03	86,461 61	30,276 37	56,18[illegible] 24	19,148 95	9,957 46	9,957 46	19,914 92	36,270 32
Vandalia	Dec. 30, 1882	4.01	290,381 77	98,520 20	191,861 57	46,506 52	36,275 09	36,275 09	72,550 18	119,311 39
J., M. & I.	"	1.09	52,108 59	25,747 72	26,360 87	10,938 05	8,531 66	8,531 66	17,063 32	9,297 55
L., C. & L.	"	4.24	283,738 03	106,932 87	176,805 16	47,775 56	37,264 92	37,264 92	74,529 84	102,275 32
			$5,819,310 57	$2,106,520 67	$3,712,789 90	.....	$706,957 05	$706,957 05	$1,413,914 10	$2,298,875 80

* (Belle. & Ind.)
(Ind., Pitts. & C.)

JAMES F. BIRD,
First Assistant Auditor.

Pullman's Palace Car Co., auditor's office, May 20, 1895, accounting department.

CENTRAL TRANSPORTATION CO.
919

1611 Circuit Court of the United States for the Eastern District of Pennsylvania.

PULLMAN'S PALACE CAR COMPANY
vs.
CENTRAL TRANSPORTATION COMPANY.
CENTRAL TRANSPORTATION COMPANY
vs.
PULLMAN'S PALACE CAR COMPANY.

October Sessions, 1886. No. 44.
(Cross-bill.)

Testimony on Behalf of Defendants in Original Bill and Complainants in Cross-bill.

WEDNESDAY, *March 15th*, 1893.

Parties met pursuant to notice. Adjourned until Wednesday, March 22d, 1893, at 3 p. m.

WEDNESDAY, *March 22d*, 1893—3 p. m.

Present: The examiner, Samuel Bell, Esq.; Frank P. Prichard, Esq., and John G. Johnson, Esq., for complainants in cross-bill.

A. H. Wintersteen, Esq., appeared for Pullman's Palace Car
1612 Company, but, as he was obliged to attend another meeting, it was agreed that the testimony taken at this meeting should be subject to his right to state any objections at the next meeting with the same effect as if they had been made at this meeting.

FRANK WECKERLY, having been duly sworn, was examined as follows:

By Mr. PRICHARD:

Q. What is your connection with the Central Transportation Company?

A. I am the secretary and treasurer.

Q. How long have you been an officer of that company?

A. Since April, 1886, but I was connected with the company before that time.

Q. For how long and in what capacity?

A. I was employed by the directors of the Central Transportation Company to trace the overissue of stock made by their former secretary and treasurer, Joseph F. Cottringer.

Q. What opportunities have you had for familiarizing yourself with the books and papers of the Central Transportation Company?

A. I have been in constant charge of their books and papers, and during the progress of their various suits have looked up all matters which required to be ascertained from the books.

Q. At the time you speak of, when you were first employed by the company, did you have occasion to examine their books and papers?

A. Only their books at that time of the stock issue, and their transfer books—things relating to their stock.

Q. What experience have you had in books and accounts; has it been of such a character as to enable you to understand the books of the Central Transportation Company?

A. I have kept commission books for one of the largest houses in the wool business in this city, and I have been book-keeper for manufacturing concerns doing large business in Camden; I have kept corporation books, and have been on the finance and
1613 auditing committee of the Fifth and Sixth Street road, with which I am connected for the last eight years.

Q. Your familiarity with books of account and corporation books extends over how many years?

A. Twenty-five.

Q. Have you made an examination of the books and papers of the Central Transportation Company which existed at the time of the making of the lease to the Pullman's Palace Car Company, dated February 17th, 1870, Exhibit A, in order to ascertain the cost of the cars, equipments, and patents which were than owned by the Central Transportation Company and included in said lease, so far as the same appear by the said books and papers?

A. I have.

Q. Please turn to those books and papers, commencing with the date nearest to said lease, and state all the information which is therein contained with reference to the cost of each item of cars or equipment, stating in your answer the book to which you refer, the page, the entry therein contained, and the papers relating thereto.

A. I now refer to the ledger of the Central Transportation Company, folio 81, account of equipment and contracts for year ending December 31st, 1869. That ledger account shows the totals extending with the details, which I have reduced on a memorandum. This covers each entry of the ledger with the details, as taken from the cash book. The first entry is:

For amounts credited this account, instead of profit and loss. March 31st, 1866, $20,300. Interest, same day, $45.

May 31st, 1866, Southern Transportation Company, stock, $50,000. Same date, bonus, $34,950.

1869, March 31st, interest, $1,141.95.

December 31st, interest, $2,319.68; total, $108,756.63. For this item, being a ledger counter-entry, I have no vouchers.

December 31st, 1869, ledger charge, $21,040.24. That was made up by bills of this amount.

James Spear & Co., $95.30, paid by check January 15th,
1614 1870, No. 158, Girard National bank, to the order of James Spear & Co., stove material.

There is a cash-book entry on folio page 139 corresponding to the ledger entry, and I produce the original voucher, being a receipt signed by James Spear & Co., dated January 15th, 1870, for $682.18, in full for various items therein specified, including this particular item. On the back of this voucher is the indorsement of Jonah Woodruff, general superintendent, that $95.30 is chargeable to equip-

ment. I also produce check of the company to the order of James Spear & Co. for the amount of this voucher, bearing the indorsement of James Spear & Co., with the bank's stamp of payment.

Pennsylvania Elastic Sponge Company, $448 for mattresses, &c. There is an entry in the cash book of date January 15th, 1870, folio 139, and I produce the original voucher, being receipt signed by the Pennsylvania Elastic Sponge Company, W. W. Fisher, president, for this specific item. On the back of the voucher is a certificate of the superintendent that the amount is chargeable to equipment of car 98.

I also produce check of the company to the order of J. E. Goodman, dated January 5th, 1870, for $496, indorsed by J. Ernest Goodman, bearing the bank's stamp of payment. On the stub of the check book, corresponding to this check, is included $448 of the voucher, which I produce.

The next item is Wilhelm & Neumann, for $559.22, hardware materials. There is an entry of this amount in the cash book under date of January 12th, 1870, folio 139.

I produce the original voucher, being receipt of Wilhelm & Neumann, dated January 12th, 1870, for $3,038.76, for various items, including, specifically, the items of hardware material, &c., above mentioned. On the back of this voucher is indorsed a certificate of the superintendent that $559.22 of said amount is for equipment.

I also produce the original check of the company to the order of Wilhelm & Neumann, dated January 12th, 1870, for $3,038.76, indorsed by Wilhelm & Neumann, bearing the bank's stamp of payment.

The next item is H. Voigt, $107.50, for glass. In the cash
1615 book there is an entry of this amount on page 139, under date January 12th, 1870.

I produce the original voucher, being the receipt of H Voigt for $621.71, dated January 12th, 1870, for a number of items, including, specifically, the items amounting to $107.50, said voucher having indorsed thereon the certificate of the superintendent that said amount of $107.50 was for equipment.

I also produce check of the company to the order of H. Voigt, dated January 12th, 1870, for $876.87, indorsed by H. Voigt and bearing the bank's stamp of payment.

I also produce the original voucher of the company for the amount making up the balance of this check, being a receipt of H. Voigt, dated January 12th, 1870, for $255.16.

The next item is $8 for glass. The entry of this item is found in the cash book on page 139 under date of January 12th, 1870. The voucher for this is the second voucher of H. Voigt, which I have already produced in connection with the last item, and which went to make up the check past produced.

The next item is Noblit, Brown, Noblit & Co. $432, for carpets. The entry of this item appears in the cash book under date of January 12th, 1870, page 139.

I produce the original voucher, being receipt of Noblit, Brown, Noblit & Co., dated January 12th, 1870, for $756.90, for various

items, specifically including the items making up the $432. On the back of this voucher is a certificate that $432 of the amount is for equipment.

I also produce the original check of the company to the order of Noblit, Brown, Noblit & Co., dated January 12th, 1870, for $756.90, with indorsement of Noblit, Brown, Noblit, Noblit & Co., bearing the bank's stamp of payment.

The next item is Doughten, Renshaw & Wilkins, $576, for sheetings and towelings. This item appears in the cash book under date January 12th, 1870, folio 139.

I produce the original voucher, being receipt of Doughten, Renshaw & Wilkins, dated January 12th, 1870, for $1,043.93, for various items, including specifically the items making up the $576. On
1616 the back of this voucher appears the certificate of the superintendent that the $576 is for equipment of cars 108, 109, 112, 113 and 98.

I also produce the original check of the company, dated January 12th, 1870, to the order of Doughten, Renshaw & Wilkins, for $1,043.93, indorsed by Doughten, Renshaw & Wilkins, and bearing the bank's stamp of payment.

The next item is Benjamin H. Shoemaker, glass, $42. This item appears in the cash book under date January 12th, 1870, folio 139.

I produce the original voucher, being receipt of Benjamin H. Shoemaker, dated January 12th, 1870, for $49.80, for various items, including specifically the items making up the $42, which are there stated to be for equipment of car 98.

On the back of the voucher is the indorsement of the superintendent, to the effect that $42 is for equipment. I have not been able to find the original check.

The next item is C. Brintzinghoffer, $10.12; the date is January 12th, 1870. This item appears in the cash book under date January 12th, 1870, folio 139.

I produce the original voucher, being receipt of C. Brintzinghoffer, dated January 12th, 1870, for various items, including specifically items amounting to $10.12, which are therein stated to be for equipment of cars 112, 113, and 98.

On the back of this voucher is the certificate of he superintendent that $10.12 of the amount is for equipment. I have not been able to find any check for these items.

The next item is Field & Hardie, $3.17 for wrenches, screwdrivers, and scissors. This item appears in the cash book under date January 12th, 1870, folio 139.

I produce the original voucher, being receipt of Field & Hardie, dated January 12th, 1870, for $12.58, for various items, including specific items amounting to $3.17, which are therein stated to be for equipment of cars 112 and 133. On the back of the voucher is the certificate of the superintendent that $3.17 was for equipment. I have not been able to find any check for this item.

The next item is Sarah Miller, $19.60, for sewing. This item appears in the cash book under date December 31st, 1869, folio 139.

1617 I produce the original voucher, being the receipt of Sarah Miller, dated December 31st, 1869, for $28.64, for various items, including the $19.60, which is therein stated to be for equipment of cars 108 and 109. On the back of this voucher is the certificate of the superintendent that $19.60 of it is for equipment.

The next item is S. M. Atwell, for $44.20, for sewing. This item appears in the cash book under date of December 31st, 1869, folio 139.

I produce the original voucher, being receipt of S. M. Atwell, dated December 31st, 1869, for $48.72, of which $44.20 is therein stated to be for equipment of cars 112, 113 and 98. On the back of this voucher appears the certificate of the superintendent that $44.20 of the amount is for equipment.

The next item is the Northern Central Railway Company, $18,667.13, for building cars 112 and 113. This item appears in the cash book under date December 31st, 1869, folio 139.

I produce the original voucher, being receipt of the Northern Central Railway Company, by J. N. Du Barry, vice-president, dated December 31st, 1869, for $18,667.13 in full for itemized bills, on which said receipt is written "for building sleeping cars Nos. 112 and 113."

I also produce the original check of the company, dated December 30th, 1869, to the order of J. N. Du Barry, general superintendent, for $18,667.13; indorsed J. N. Du Barry, general superintendent, bearing the bank's certificate of payment.

The next item is Wallis, Cavitt & Co. for $28, for spittoons. This item appears on the cash book under date December 28th, 1869, folio 139.

I produce the original voucher, being receipt of Wallace, Cavitt & Co., dated December 28th, 1869, for $48, of which $28 are therein stated to be for equipment of cars 112, 113 and 98, and $20 for general use in store-room. On the back of this voucher is the certificate of the superintendent that $28 is for equipment of cars 112, 113 and 98.

I also produce original abstract of payments by the treasurer of the Central Transportation Company for the month of December, 1869, filed among its papers of that year, containing the items to which I have hereinbefore referred.

1618 The next item is the ledger folio 81, a charge of $84,779.91, which includes the following item: Southern Transportation Company, $40,000 for eight cars. This item appears in the cash book under date November 30th, 1869, folio 136.

I produce the original voucher, being receipt of the Southern Transportation Company, dated November 10th, 1869, for $40,000, for cars 2, 5, 9, 10, 11, 12, 13 and 14. On the back of this voucher is the indorsement of the superintendent that it is for equipment. The numbers of these cars are the original numbers when purchased from the Southern Transportation Company. They are not the numbers which were given to them by the Central Transportation Company.

This voucher contains a memorandum, "paid in stock Central

Transportation Company, eight hundred shares at $50," and also a memorandum " per resolution of the board of directors, dated October 1st, 1869."

The Pennsylvania Elastic Sponge Company, $897.27 for mattresses. This item appears on the cash book under date of December 13th, 1869, folio 135.

I produce the original voucher, being receipt of the Pennsylvania Elastic Sponge Company, dated December 13th, 1869, for $897.27, for mattresses, &c., therein stated to be for equipment of cars 112 and 113. On the back of this voucher appears the certificate of the superintendent that it is for equipment.

I also produce original check of the company to the order of the Pennsylvania Elastic Sponge Company, dated December 16th, 1869, for $897.27, indorsed by the Pennsylvania Elastic Sponge Company, and bearing the bank's stamp of payment.

Wilhelm & Neumann, $1,225.12 for hardware and metal work. This item appears in the cash book under date December 16th, 1869, folio 135.

I produce the original voucher, being receipt of Wilhelm & Neumann, dated December 16th, 1869, for $3,059.97, for various items, including the items making up the $1,225.12. On the back of this voucher is the indorsement of the superintendent that $1,225.12 of it is for equipment.

1619 I also produce original check of the company to the order of Wilhelm & Neumann, dated December 14th, 1869, for $3,059.97, indorsed by Wilhelm & Neumann, bearing the bank's stamp of payment.

Pennsylvania railroad, $8,431.69, for building car No. 97. This item appears on the cash book under date of December 8th, 1869, folio 135.

I produce the original voucher, being receipt of the Pennsylvania Railroad Company, per Edward H. Williams, general superintendent, dated December 8th, 1869, for $8,431.69, for building new car No. 97. On the back of this voucher is the indorsement of the superintendent that this amount is for equipment.

I also produce original check of the company to E. H. Williams, general superintendent, dated December 7th, 1869, for $8,638.36, indorsed by Edward H. Williams, general superintendent, and bearing the bank's stamp of payment. The difference between the check and the voucher is made up by another bill, which appears in the original abstract for the month, which I will produce.

James Spear & Co., $50 for stove-work. This item appears in the cash book under date December 6th, 1869, folio 135.

I produce the original voucher, being receipt of James Spear & Co., for $432.14, dated December 6th, 1869, for various items, including specifically the item of $50, with a memorandum attached thereto that this item of $50 was for equipment of car No. 98. On the back of the voucher is the certificate of the superintendent that $50 was for equipment.

I also produce original check of the company to the order of James Spear & Co., dated December 6th, 1869, for $432.14, with

the indorsement of James Spear & Co. and the bank's stamp of payment.

B. H. Shoemaker, $134 for glass. This item appears in the cash book, under date December 6th, 1869, folio 135.

I produce the original voucher, being receipt of Benjamin H. Shoemaker, dated November 30th, 1869, for $201.50 for glass. On the back of this voucher is the certificate of the superintendent that $67.16 is for equipment.

1620 I also produce the original check of the company to the order of B. A. Shoemaker, dated December 6th, 1869, for $201.50, indorsed by Benjamin H. Shoemaker and bearing the bank's stamp of payment.

Leedom & Shaw, $274.81 for carpets. This item appears in the cash book under date of December 6th, 1869, folio 135.

I produce the original voucher, being receipt of Leedom & Shaw, being for $379.46 for various items, of which $274.81 are therein stated to be for equipment of cars 112, 113 and 120. On the back of this voucher is a certificate of the general superintendent that $274.81 is for equipment.

I also produce original check of the company to the order of Leedom & Shaw, dated December 6th, 1869, for $379.46, bearing the indorsement of Leedom & Shaw and the bank's stamp of payment.

Field & Hardie, $2.50, hardware. This item appears in the cash book under date of December 6th, 1869, folio 135.

I produce the original voucher, being receipt of Field & Hardie, dated December 6th, 1869, for $23.75, for various items, of which $2.50 are therein stated to be for equipment of car 120, and $21.25 for general use. On the back of this voucher appears the certificate of the superintendent that $2.50 of it is for equipment. I find no check for this voucher.

William Groves & Co., $287.50, feathers. This item appears in the cash book under date December 6th, 1869, folio 135.

I produce the original voucher, being receipt of William Groves & Co., dated December 6th, 1869, for $287.50 for various items, therein stated to be for equipment of cars 112, 113 and 98. On the back of this voucher is the certificate of the superintendent that it is for equipment.

I also produce original check of the company to the order of William Groves & Co., dated December 6th, 1869, for $287.50, indorsed by William Groves & Co. and bearing the bank's stamp of payment.

Paton & Co., $201.28, ticking. This item appears in the cash book under date December 6th, 1869, folio 135.

1621 I produce the original voucher, being receipt of Paton & Co., dated December 6th, 1869, for $201.28 for ticking, therein stated to be for equipment of cars 112 and 113. On the back of this voucher is the certificate of the superintendent that it is for equipment.

I also produce original check of the company, dated December

6th, 1869, to the order of Paton & Co., for $201.28, with the indorsement of Paton & Co. and the bank's stamp of payment.

Little Miami Railroad Company, $20,160.57 for building cars 104 and 105. This item appears in the cash book under date December 6th, 1869, folio 135.

I produce the original voucher, being receipt of Little Miami Railroad Company, by S. E. Wright, treasurer, dated December 6th, 1869, for $20,160.57 for building Woodruff palace cars 104 and 105. On the back of this voucher is the certificate of the superintendent that it is for equipment.

I also produce original check of the company to the order of D. G. A. Davenport, auditor of Little Miami Railroad Company, dated December 4th, 1869, for $20,160.57, indorsed by D. G. A. Davenport, auditor, bearing the bank's stamp of payment.

James L. Howard & Co., $2,009, blankets. This item appears in the cash book under date December 4th, 1869, folio 135.

I produce the original voucher, being receipt of James L. Howard & Co., dated December 4th, 1869, for $7,845.03 for various items therein specified, which are therein stated to be for equipment of cars 23, 98, 112, 113, 120, $2,009, and for repairs for general use, $5,836.03. On the back of this voucher is the certificate of the superintendent that $2,009 was for equipment.

I also produce original check of the company to the order of James L. Howard & Co., dated December 3d, 1869, for $7,845.03, indorsed by James L. Howard & Co. and bearing the bank's stamp of payment.

Paton & Co., $152.28, quilts. This item appears in the cash book under date December 4th, 1869, folio 135.

1622 I produce the original voucher, being receipt of Paton & Co., dated December 4th, 1869, for $190.35 for quilts, of which $152.28 are therein stated to be for cars 112, 113 and 98, and $38.07 for general use. On the back of this voucher appears the certificate of the superintendent that $152.28 is for equipment.

I also produce original check of the company to the order of Paton & Co., dated December 3d, 1869, for $190.35, indorsed by Paton & Co. and bearing the bank's stamp of payment.

The Harlan & Hollingsworth Company, $511.68, steel axles. This item appears in the cash book under date of December 3d, 1869, folio 135.

I produce the original voucher, being receipt of the Harlan & Hollingsworth Company, by J. T. Gauze, vice-president, dated December 3d, 1869, for $511.68. On the back of this voucher is the certificate of the superintendent that the amount is for equipment, and a memorandum that it is for cars 114, 115 and 112. I do not find a check for this voucher.

The Harlan & Hollingsworth Company, $10,000, building car 120. This item appears in the cash book under date December 3d, 1869, folio 135.

I produce the original voucher, being receipt of the Harlan & Hollingsworth Company, by J. T. Gauze, vice-president, dated December 3d, 1869, for $10,000, for Woodruff silver palace sleeping

car 120. On the back of this voucher is the certificate of the superintendent that it is for equipment.

I also produce original check of the company, to the order of the Harlan & Hollingsworth Company, dated December 2d, 1869, for $10,229.68, indorsed by Samuel Harlan, Jr., president, and bearing the bank's stamp of payment. This check appears to be for $229.68 more than the voucher. I am unable to explain the discrepancy.

Mary A. Harvey, $25, sewing. This appears in the cash book under date of November 30th, 1869, folio 135.

I produce the original voucher, being receipt of Mary A. Harvey, dated November 25th, 1869, for $25, therein stated to be for
1623 work on cars 112 and 113. On the back of this voucher is the certificate of the superintendent that the amount is for equipment. I find no check for the voucher.

Sarah Miller, $12.90, sewing. This item appears in the cash book under date November 30th, 1869, folio 135.

I produce the original voucher, being receipt of Sarah Miller, dated November 30th, 1869, for $53.14 for sewing, with memorandum on face of voucher that $12.90 is for equipment of cars 112, 113 and 98, and $40.24 for general use. On the back of this voucher is the certificate of the superintendent that $12.90 is for equipment. I do not find any check for the voucher.

It appears from the stub of the check book that it was the custom of the company to draw checks for lump sums to the order of one of its officers, for the payment of more of these smaller bills, which explains the absence of checks.

Doughton, Renshaw & Wilkins, $186, sheetings, towelings, &c. This item appears in the cash book under date November 30th, 1869, folio 135.

I produce the original voucher, being receipt of Doughton, Renshaw & Wilkins, dated November 30th, 1869, for $420.83 for various items, of which $186 is therein stated to be for equipment of cars 112, 120 and 113, and the balance for repairing car 54 and for general use. On the back of this voucher is the certificate of the superintendent that $186 is for equipment.

I also produce original check of the company, to the order of Doughton, Renshaw & Wilkins, dated December 6th, 1869, for $420.83, with indorsement of Doughton, Renshaw & Wilkins and the bank's stamp of payment.

C. Brintzinghoffer, $4.18, brushes. This item appears in the cash book under date November 30th, 1869, folio 135.

I produce the original voucher, being receipt of C. Brintzinghoffer, dated November 30th, 1869, for $43.62, of which $4.18 is therein stated to be for equipment of car 120 and the balance for general use. On the back of this voucher is the certificate of the superintendent that $4.18 is for equipment. I find no voucher in this case.

1624 The Philadelphia, Wilmington and Baltimore Railroad Company, $6, freight. This item is found in the cash book under date 22d November, 1869, folio 135.

I produce the original voucher, being receipt of the Philadelphia, Wilmington and Baltimore Railroad Company, by John M. Newcomb, dated November 25th, 1869, for transportation from Wilmington of one silver palace car No. 120. On the back of this voucher is the certificate of the superintendent that it is for equipment. I find no check for the voucher in this case.

Paton & Co., $203.04, quilts. This item appears in the cash book under date November 19th, 1869, folio 135.

I produce the original voucher, being receipt of Paton & Co., dated November 19th, 1869, for $211.50 for quilts. On the back of the voucher appears the certificate of the superintendent that $203.04 is for equipment, and a memorandum that it is for equipment of cars 98, 112, 113 and 121.

I produce the original check of the company, to the order of Paton & Co., dated November 16th, 1869, for $211.50, bearing the indorsement of Paton & Co. and the bank's stamp of payment.

W. H. Horstmann & Sons, $4.75, binding. This item appears in the cash book under date November 15th, 1869, folio 135.

I produce the original voucher, being receipt of W. H. Horstmann & Sons, dated November 15th, 1869, for $9.50 for binding, which is therein stated to be $4.75 for equipment of car 98 and $4.75 for repairs of car 54. On the back of the voucher appears the certificate of the superintendent that $4.75 is for equipment. I find no check for this voucher.

I also produce original treasurer's abstract of payments for the month of November, 1869, filed among the company's papers of that date, and including the various items for the month, which I have hereinbefore given.

Adjourned.

1625 The next item on the ledger, folio 81, is a charge of $43,388.78, which includes the following items:

Southern Transportation Company, for use of cars 2, 5, 9, 10, 11, 12, 13, and 14 during month of September, $150 each, $1,200. See cash book, October 30th, 1869, folio 134.

Original voucher produced, being receipt of W. S. Cottringer for Southern Transportation Company, dated October 20th, 1869, for $1.200, indorsed "For equipment." I find no check for this item.

$1,200 for use of cars 2, 5, 9, 10, 11, 12, 13, and 14 during month of October, $150 each, $1,200. See cash book October 30th, 1869, folio 134.

Original voucher produced, being receipt of W. S. Cottringer for Southern Transportation Company, dated November 15th, 1869, for $1,200, indorsed on back "For equipment." I find no check for this item.

Jennie Norman, for sewing, $10. See cash book, October 30th, 1869, folio 133.

Original voucher produced, being receipt of Jennie Norman for $10, dated October 30th, 1869, bearing indorsement of superintendent that it is for equipment, $10. I find no check for this item.

S. M. Atwell, for sewing, $30. See cash book, November 13th, 1869, folio 133.

Original voucher produced, being receipt of S. M. Atwell for $79.60 for sewing, equipment of cars 114 and 115. On back of voucher appears indorsement by superintendent, "Equipment of cars 114 and 115, $30. General use, $49.60." I find no check for this item.

Doughten, Renshaw & Wilkins, $260.50. See cash book, November 13th, 1869, folio 133.

Original voucher produced, being for sheetings and towelings, &c., for $1,277.53; for equipment of cars 114 and 115, $260.50. On back of this voucher appears indorsement of superintendent that it is for equipment, $260.50.

I also produce original check of company, dated November 13th, 1869, for $1,277.53, to the order of Doughten, Renshaw & Wilkins, bearing indorsement of said firm and bank's stamp of payment.

1626 Charles Britzinghoffer, for brushes, $54.12. See cash book, November 13th, 1869, folio 133.

Original voucher produced, being receipt of claimant, dated November 13th, 1869, for $54.12, $34 of which is for equipment of cars 114, 115, 118 and 109. On back of voucher appears indorsement of superintendent that $34 is for equipment. I find no check for this item.

William Groves & Co., $112.50 for equipment. See cash book, November 13th, 1869, folio 133.

Original voucher produced, being receipt of Groves & Co. for $117.40, $112.50 of which is for equipment of car No. 98. On outside of voucher appears indorsement of superintendent showing it to be for equipment of car No. 98, to the amount of $112.50.

I also produce original check of company, to the order of William Groves & Co. for $117.40, indorsed by William Groves & Co., and bearing bank's stamp of payment.

Noblit, Brown, Noblit & Co., $338.40 for equipment of cars 112 and 113. See cash book, November 13th, 1869, folio 133.

Original voucher produced, to Noblit, Brown, Noblit & Co., November 13th, 1869, being receipt for $338.40 for equipment, with indorsement on voucher by superintendent that it is for equipment.

Original check of company produced, to the order of Noblit, Brown, Noblit & Co., for $338.40, indorsed by said firm and bearing bank's stamp of payment.

The Philadelphia, Wilmington and Baltimore Railroad Company, $19,500, for two sleeping cars, Nos. 108 and 109. See cash book, November 12th, 1869, folio 133.

Original voucher produced, being receipt of A. Horner, treasurer, dated November 12th, 1869, $19,500, said voucher being indorsed by superintendent for equipment of cars 108 and 109.

Original check produced, to the order of H. F. Kenney, general superintendent Philadelphia, Wilmington and Baltimore Railroad Company, $19,500, dated November 12th, 1869, indorsed "Pay to

the order of A. Horner, treasurer; H. F. Kenney, superin-
1627 dent. For deposit to credit of Philadelphia, Wilmington and Baltimore Railroad Company, A. Horner, treasurer," bearing bank's stamp of payment.

W. C. Creamer & Son, $103.50. See cash book, November 6th, 1869, folio 135. For equipment of car 99.

Original voucher produced, bearing date November 6th, 1869, for $103.50, signed by Creamer & Son, per F. A. Wilcoxson, indorsed by superintendent that it is for equipment.

Original check produced, dated November 5th, 1869, to the order of W. C. Creamer & Son, $105.50, indorsed by them and bearing the bank's stamp of payment.

William Owens & Co., $11, silver-plated ware. See cash book, October 30th, 1869, folio 132.

Original voucher produced, being receipt of William Owens & Co., dated October 30th, 1869, for $11 for silver-plated ware, voucher indorsed by superintendent that it is for equipment. I find no check for this item.

Russell & Irwin Manufacturing Company, $3 for locks. See cash book, October 30th, 1869, folio 132.

Original voucher produced, being receipt of said company for $3, dated October 30th, 1869, indorsed by the superintendent that it is for equipment. I find no check for this item.

Field & Hardie $18.40 for hardware. See cash book, October 30th, 1869, folio 132.

Original voucher produced, being receipt of said firm, dated October 28th, 1869, for $23.83 for hardware, indorsed by superintendent that $18.40 is for equipment. I find no check for this item.

The Harlan & Hollingsworth Company, $20,497.33 for two Woodruff silver palace sleeping cars, Nos. 114 and 115. See cash book, October 25th, 1869, folio 132.

Original voucher produced, being receipt of J. T. Gauze, vice-president, for $20,497.33 for said cars. This bears indorsement of superintendent that it is for equipment, the amount stated to be $20,497.33.

Original check produced, bearing date October 23d, 1869, to the order of the Harlan & Hollingsworth Company for $20,497.33, indorsed J. T. Gauze, vice-president, and bearing bank's stamp of payment.

1628 The Philadelphia, Wilmington and Baltimore Railroad Company, $12. See cash book, October 18th, 1869, folio 132.

Original voucher produced, being receipt of J. L. Newcomb for the Philadelphia, Wilmington and Baltimore Railroad Company for $12, freight on cars 114 and 115, voucher being indorsed by superintendent that it is for equipment. I find no check for this item.

Charles Gooch, $4.15 for wrench, shovel and poker. See cash book, October 18th, 1869, folio 132.

Original voucher produced, being receipt of Charles Gooch, dated November 18th, 1869, for $4.15, indorsed on back by superin-

tendent that it is for equipment of cars 104 and 105. I find no check for this item.

Bart & Hickox, $14.50 for brushes. See cash book October 15th, 1869, folio 132.

Original voucher produced, being receipt of Bart & Hickox of $14.50, dated October 15th, 1869, indorsed by superintendent that it is for equipment of cars 104 and 105. I find no check for this item.

Hunnewell, Moores & Hukel, spittoons, $39.50. See cash book October 15th, 1869, folio 132.

Original voucher produced, being the following receipts of said firm: dated October 13th, 1869, $10; October 15th, 1869, $39.50; October 15th, 1869, $2, making a total of $51.50, bearing indorsement of superintendent that $39.50 of this amount is for equipment. I find no check for this item.

I also produce original treasurer's abstract of payments for month of October, 1869, filed among the company's papers at that date, and including the various items for the month which I have hereinbefore given.

The next item is on ledger folio 81, the charge being $25,513.75, which includes the following items:

Southern Transportation Company, $1,200. See cash book, September 30th, 1869, folio 128.

Original voucher produced, being receipt of W. S. Cottringer for the Southern Transportation Company, dated September 16th, 1869, for $1,200, for use of cars 2, 5, 9, 10, 11, 12, 13 and 14 during
1629 the month of August, 1869, indorsed on back as being for equipment. I find no check for this item.

Jonah Woodruff, $135.60, sundry bills. See cash book, October 12th, 1869, folio 127.

Original voucher produced, being receipt of Jonah Woodruff for $135.60, dated October 12th, 1869, bearing indorsement of superintendent that it is for equipment of cars 106 and 107. I find no check for this item.

Doughten, Renshaw & Wilkins, $246. See cash book October 12th, 1869, folio 127.

Original voucher produced for $1,007.99, being receipt of Doughten, Renshaw & Wilkins, under date October 12th, 1869, for dry goods, and bearing indorsement of superintendent that $246 of this amount is for equipment of cars 104 and 105. I find no check for this item.

J. L. Howard & Co., $5,440 for blankets. See cash book, October 12th, 1869, folio 127.

Original voucher produced, being receipt of J. L. Howard & Co. for $6,898.06 for blankets, indorsed on back by superintendent that $5,440 of this amount is for equipment.

Original check of company produced, dated October 9th, 1869, for $6,898.06, to the order of James L. Howard & Co., indorsed "Pay to the order of Phœnix National Bank of Hartford, James L. Howard & Co., pay Farmers' and Mechanics' National Bank, of Philadelphia,

or order, H. A. Redfield, cashier," and bearing the bank's stamp of payment.

Mary A. Harvey, $48 for sewing. See cash book, September 30th, 1869, folio 126.

Original voucher produced, being receipt of Mary A. Harvey for $60 for sewing, indorsed by superintendent that $48 of this amount is for equipment of cars Nos. 104, 105, 106 and 107. I find no check for this item.

Jennie Norman, $60.80 for sewing. See cash book, September 30th, 1869, folio 126.

Original voucher produced, being receipt of Jennie Norman for $62.36, bearing indorsement of superintendent that $60.80 of this amount is for equipment of cars 104, 105, 106 and 107. I find no check for this item.

1630 S. M. Atwell, $44.40 for sewing. See cash book September 30th, 1869, folio 126.

Original voucher produced, being receipt of same for $52.56, with indorsement of superintendent that $44.40 of this amount is for equipment of cars 106, 107, 110 and 111. I find no check for this item.

Patton & Co., $543.14. See cash book, September 30th, 1869, folio 126.

Original voucher produced, being receipt of Patton & Co. for two amounts, September 25th, 1869, $551.60, and October 1st, 1869, $211.50; total, $763.10, bearing indorsement of superintendent that $543.14 of this amount is for equipment of cars 104, 105, 106 and 107.

Original checks of company produced as follows: September 24th, 1869, to the order of Patton & Co., $551.60, indorsed for deposit by Patton & Co., bearing bank's stamp of payment; September 30th, 1869, to the order of Patton & Co., for $211.50, indorsed for deposit by Patton & Co. and bearing bank's stamp of payment.

Wilhelm & Neumann, $23.75. See cash book, September 30th, 1869, folio 126.

Original voucher produced, being receipt of Wilhelm & Neumann for $249.19, with indorsement of superintendent that $23.75 of said amount is for equipment of cars 91 and 92. I find no check for this item.

N. Kalck & Sons, $70 for glass. See cash book, September 30th, 1869, folio 126.

Original voucher produced, being receipt of said firm for $70, dated September 30th, 1869, bearing indorsement of superintendent that it is for equipment of car 98. I find no check for this item.

D. W. Stuart, for wood hangings, $10. See cash book, September 30th, 1869, folio 126.

Original voucher produced, being receipt of D. W. Stuart, dated September 25th, 1869, for $10, bearing indorsement of superintendent that it is for equipment of car 98.

The Cincinnati Elastic Sponge Company, $1,423.20. See cash book, September 22d, 1869, folio 126.

1631 Original voucher produced, being receipt of said company, dated September 22d, 1869, for $1,423.20, indorsed by super-

intendent that it is for equipment of cars 106 and 107. I find no check for this item.

Joseph C. Ringwalt, $326.20. See cash book, September 18th, 1869, folio 126.

Original voucher produced, being receipt of Ringwalt for carpets, $326.20, dated September 18th, 1869, indorsed on back by superintendent that it is for equipment of cars 106 and 107. I find no check for this item.

Cincinnati, Hamilton and Dayton Railroad Company, $15,600. See cash book, September 18th, 1869, folio 126.

Original voucher produced, being bill for two first-class sleeping coaches, built for Cincinnati and Chicago Railroad lines via Lima, as per agreement of April 23d and 26th, 1869, with O. W. Childs, president, $7,800 each: "I hereby certify that the cars above designated have been completed, and are now ready to run as proposed. D. E. Holmes, assistant superintendent of Central Transportation Company. Approved, D. McLaren, general superintendent. Approved, Jonah Woodruff, general superintendent."

I produce draft of Cincinnati, Hamilton and Dayton Railroad Company, dated Cincinnati, Ohio, September 15th, 1869, "Pay to the order of B. D. Stevenson, paymaster, the sum of $15,600, and charge to account of this company, for two first-class sleeping coaches, as per contract with O. W. Childs, president, to J. F. Cottringer, treasurer Central Transportation Company, West Philadelphia, Pa;" signed by the president, and indorsed "Pay American Exchange National bank, or order, B. D. Stevenson, paymaster;" "Pay Tradesmen's National bank, Philadelphia, or order, E. Wilson, cashier."

Also check of the company, dated September 17th, 1869, to the order of J. F. Cottringer, for $7,600, indorsed J. F. Cottringer and bearing bank's stamp of payment.

Also check of September 17th, 1869, to the order of J. F. Cottringer, for $8,000, indorsed by J. F. Cottringer and bearing bank's
1632 stamp of payment. This voucher bears the indorsement of the superintendent that it is for equipment of cars 106 and 107.

Wilhelm & Neumann, $204.16. See cash book, September 14th, 1869, folio 126.

Original voucher produced, being receipts of said firm for $178.90, $553.06 and $184.35, amounting to $916.31; five per cent. discount, $45.81; leaving $870.50, being receipt of Wilhelm & Neumann for $370.50, bearing indorsement of superintendent that $204.16 is for equipment of cars 110 and 111.

Check of company produced, to the order of Wilhelm & Neumann, dated September 14th, 1869, for $870.50, indorsed by said firm and bearing bank's stamp of payment.

William Groves & Co., $138.50. See cash book, August 31st, 1869, folio 126.

Original voucher produced, being bill of said company for feathers for $244.60, dated August 31st, 1869, indorsed by superintendent that $138.50 of this amount is for equipment of car 97.

Also check of company, dated September 7th, 1869, to the order

of William Groves & Co., for $244.60, indorsed "For deposit only, First National Bank of Camden, William Groves & Co.," and bearing bank's stamp of payment.

I also produce original treasurer's abstract of payments for the month of September, 1869, filed among the company's papers at that date, and including the various items for the month, which I have hereinbefore given.

The next item on the ledger folio 81 is $23,588.67, which includes the following items:—

Southern Transportation Company, $1,200 for use of cars 2, 5, 9, 10, 11, 12, 13, 14 during July at $150 each.

I produce the original voucher, being receipt of W. S. Cottringer, bearing indorsement on the back that it is for equipment.

I produce check of the company on the Citizens' Bank of Pittsburgh for $760.20 in settlement of above bill, less credit fifteen per cent. of the receipts of the Southern Transportation Company in July, 1869, $659.70.

1633 Next item, Harlan & Hollingsworth Company, $20,021.33.

I produce the original voucher, being the receipt of the Harlan & Hollingsworth Company for $20,021 33 for two Woodruff silver palace cars, Nos. 110 and 111, indorsed with the certificate of the superintendent that it is for equipment.

I produce the original checks of the company to the order of Harlan & Hollingsworth Company, indorsed by the payee with the bank's stamp of payment, as follows: Corn Exchange National bank, September 8th, 1869, $8,021.33; Corn Exchange National bank, September 2d, 1869, $10,000; the Girard National bank, September 2d, 1869, $2,000.

The next item, Philadelphia, Wilmington and Baltimore railroad for $12 for freight on cars 110 and 111.

I produce the original voucher of the Philadelphia, Wilmington and Baltimore railroad, being receipted freight bill for freight on cars 110 and 111, bearing the indorsement of the superintendent that it is for equipment. This bill was paid by check No. 7907, Girard National bank, for which I produce original stub, showing specifically that item.

The next item, J. C. Rouse & Co., five gross English lining nails, $5. This item appears in the cash book under date of August 31st, 1869, folio 125.

I produce the original voucher, being receipt of J. G. Rouse & Co. for $5, dated August 31st, 1869, for this specific item, bearing the indorsement of the superintendent that it is for equipment of car No. 97. I find no check for this item, but find and produce the original stub check book of the company showing under date of September 7th, 1869, No. 7907 for $674.93, showing this specific amount included.

Next item, Benjamin H. Shoemaker, $37 40 for glass. This item appears in the cash book under date of August 31st, 1869, folio 125.

I find and produce the following voucher, being receipt of Benjamin H. Shoemaker for $37.40, dated August 31st, 1869, bearing

the indorsement of the superintendent that it is for equipment of car 98.

I find and produce the original stub check book of the company showing under date of September 7th, 1869, 7907 for $674.93, showing this specific amount included.

1634 The next item, J. H. Orne's Son & Co. for $141.14 for carpet. This item appears in the cash book under date of August 31st, 1869, folio 125.

I produce the original voucher, being receipt of J. H. Orne's Son & Co., dated August 31st, 1869, bearing on the back the indorsement of the superintendent that it is for equipment of car 97.

I produce the original check of the company and stub No. 7907 for $674.93, showing this specific amount included, and bearing the indorsement of R. Hays and the bank's stamp of payment.

Noblit, Brown & Noblit, $641.48. This item appears in the cash book under date of August 31st, 1869, folio 125.

I produce the original voucher, being receipt of Noblit, Brown, Noblit & Co. for $645.13, dated August 31st, 1869, for various items, including the item of $641.48, with a memorandum thereon that $641.48 is for equipment of car No. 97, and bearing the superintendent's indorsement that it is for equipment.

I produce original check of the company to the order of Noblit, Brown & Noblit, dated September 7th, 1869, indorsed by Noblit, Brown & Noblit, and with the bank's stamp of payment for $645.13.

Field & Hardy, $5.25 for hardware. This item appears in the cash book under date of August 31st, 1869, folio 125.

I produce the original voucher, being receipt of Field & Hardy for $10.50, dated August 31st, 1869, for various items, including the item of $5.25, and bearing the superintendent's indorsement that it is for equipment of car No. 97.

I produce the original check and stub to the order of R. Hays, dated September 7th, 1869, for $674.93, showing this specific amount included.

Doughten, Renshaw & Wilkins, $618.50 for dry goods. This item appears in the cash book under date of August 31st, 1869, folio 125.

I produce original voucher, being the receipt of Doughten, Renshaw & Wilkins for $752.17, dated August 31st, 1869, for various items, including the item of $618.50, with a memorandum

1635 thereon that said item was for equipment of cars Nos. 106, 107, 110 and 111 and 97, bearing the indorsement of the superintendent that it is for equipment.

I produce the original check of the company to the order of Doughten, Renshaw & Wilkins, dated September 7th, 1869, for $752.17, indorsed by the payee and bearing the bank's stamp of payment.

William Akers & Co., $10 for spittoons. This item appears in the cash book under date of August 31st, 1869, folio 125.

I produce the original voucher, being the receipt of William Akers & Co. for $17.50, dated August 31st, 1869, for various items, includ-

ing the amount of $10 for equipment of car 97, bearing indorsement of the superintendent that it is for equipment.

I produce the original check of the company to the order of R. Hays, assistant superintendent, dated September 7th, 1869, for $674.93, indorsed by the payee with the bank's stamp of payment and the stub of check book showing this specific amount included.

C. Brintzinghoffer & Co., $25.95 for brushes. This item appears in the cash book under date of August 31st, 1869, folio 125.

I produce the original voucher, being receipt of C. Brintzinghoffer for $35.95, dated August 31st, 1869, for various items, including the item of $25.95, with a memorandum thereon that said item was for the equipment of cars 97, 110 and 111, bearing the indorsement of the superintendent that it is for equipment.

I produce the original check of the company to the order of R. Hays, assistant superintendent, for $674.93, indorsed by the payee and with the bank's stamp of payment and the stub of the check showing this specific amount included.

Leedom & Shaw, $20 for carpets. This item appears in the cash book under date of August 31st, 1869, folio 125.

I produce the original voucher, being receipt of Leedom & Shaw for $101.75, dated August 31st, 1869, for various items, including the item of $20, with a memorandum thereon that said item
1636 was for the equipment of cars Nos. 97, 110 and 111, with the superintendent's indorsement that it was for equipment.

I produce the original check of the company to the order of R. Hays for $674.93, dated September 7th, 1869, indorsed by payee and with the bank's stamp of payment and stub showing the specific amount included.

H. Voigt, $5.40 for glass. This item appears in the cash book under date of August 31st, 1869, folio 125.

I produce the original voucher, being receipt of H. Voigt for $34.46, dated August 31st, 1869, for various items, including the item of $5.40, with a memorandum thereon that said item is for equipment of car No. 97, bearing the indorsement of the superintendent that it is for equipment.

I produce the original check of the company to the order of R. Hays for $674.93, dated September 7th, 1869, indorsed by the payee and with the bank's stamp of payment and stub showing this specific amount included.

Jennie Norman, $30 for sewing. This item appears in the cash book under date of August 31st, 1869, folio 125.

I produce the original voucher, being the receipt of Jennie Norman for $66.92, dated August 31st, 1869, for various items, including the item of $30, with a memorandum thereon that said item was for the equipment of cars Nos. 110 and 111, indorsed with the certificate of the superintendent that it was for equipment.

I produce the original check of the company to the order of R. Hays for $674.93, dated September 7th, 1869, indorsed by the payee and with the bank's stamp of payment and with the stub showing this specific amount included.

S. M. Atwell, $37 for sewing. This item appears in the cash book under date of August 31st, 1869, folio 125.

I produce the original voucher, being the receipt of S. M. Atwell for $45.66, dated August 31st, 1869, for various items, including the item of $37, with a memorandum thereon that said item was for equipment of cars Nos. 97, 106 and 107, and indorsed with the certificate of the superintendent that it is for equipment.

1637 I produce the original check of the company to the order of R. Hays for $674.93, dated September 7th, 1869, indorsed by the payee and with the bank's stamp of payment and stub showing this specific amount included.

Patton & Co., $172.02 for terry. This item appears in the cash book under date of August 20th, 1869, folio 124.

I produce the original voucher, being the receipt of Patton & Co., for $331.16, dated August 20th, 1869, for various items, including the item of $172.02, with a memorandum thereon that the said item was for car No. 98, and indorsed with the certificate of the superintendent that it is for equipment.

I produce the original check of the company to the order of Patton & Co. for $331.16, dated August 19th, 1869, indorsed by the payee and bearing the bank's stamp of payment.

Murdock & Lacey, $258.50 for pumps and basins. This item appears in the cash book under date of July 28th, folio 124.

I produce the original voucher, being the receipt of Murdock & Lacey for $258.50, dated July 28th, 1869, for this specific item. I find no check for this item.

I also produce the treasurer's original abstract of payments for the month of August, 1869, filed among the company's papers of that date, and including the various items for the month, which I have hereinbefore given.

The next item on the ledger, folio 81, is a charge of $5,446.27, which includes the following items: Southern Transportation Company, $1,200 for use of cars Nos. 2, 5, 9, 10, 11, 12, 13 and 14 during the month of June, at $150 each. This item appears in the cash book under date of July 31st, 1869, folio 123.

I produce original voucher, being receipt of W. S. Cottringer for $1,200, dated July, 1869, for this specific item, bearing the superintendent's indorsement that it is for equipment. I find no check for this item.

Wilhelm & Newmann, $1,133.69 for silver-plating. This item appears in the cash book under date of August 4th, 1869, folio 122.

1638 I produce the original voucher, being receipt of Wilhelm & Newmann for $3,248.21 for various items, including the item of $1,133.69, indorsed with the certificate of the superintendent that $1,133.69 of this amount is for equipment of car No. 97.

I produce the original check of the company to the order of Wilhelm & Newmann for $3,248.21, dated August 4th, 1869, indorsed by the payee with the bank's stamp of payment.

W. H. Horstmann & Sons (binding), $9.50. This item appears in the cash book under date of July 31st, 1869, folio 121.

I produce the original voucher, being receipt of Horstmann & Sons for $19, dated July 31st, 1869, for various items, including the item of $9.50, with a memorandum thereon that said item was for equipment of cars Nos. 106 and 107, indorsed with the certificate of superintendent that it is for equipment.

I produce the original check of the company to the order of R. Hays, assistant superintendent, for $1,034.02, dated August 12th, 1869, indorsed by payee and bearing the bank's stamp of payment and stub showing this specific amount included.

Paton & Co., $5,916, blouse linen. This item appears in the cash book under date of July 31st, 1869, folio 121.

I produce the original voucher, being receipt of Paton & Co., for $59.16, dated July 31st, 1869, for this specific item.

I produce the original check of the company to the order of R. Hays, assistant superintendent, for $311.69, dated August 6th, 1869, indorsed by payee and with bank's stamp of payment and stub showing this specific amount included.

Mary A. Harvey, $16.80 for sewing. This item appears in the cash book under date of July 31st, 1869, folio 121.

I produce the original voucher, being receipt of Mary Harvy, dated July 24th, 1869, for $28.80, for various items, including the item of $16.80, with a memorandum thereon that said item was for equipment of car No. 97 and indorsed with certificate of superintendent that $16.80 of this amount is for equipment.

1639 I produce the original check of the company to the order of R. Hays for $311.69, dated August 6th, 1869, indorsed by the payee and with the bank's stamp of payment and stub showing this specific amount included.

Cooper & Jones, $15, marble basin. This item appears in the cash book under date of July 31st, 1869, folio 121.

I produce the original voucher, being receipt of Cooper & Jones, dated July 31st, 1869, for this specific item.

I produce the original check of the company to the order of R. Hays, assistant superintendent, for $1,034.02, dated August 12th, 1869, indorsed by payee with the bank's stamp of payment and stub showing this specific amount included.

Thomas Thompson's Sons & Co., $82 for decoration. This item appears in the cash book under date of July 31st, 1869, folio 121.

I produce the original voucher, being receipt of Thomas Thompson's Sons & Co. for $82, dated July 31st, 1869, for this specific item.

I produce the original check of the company to the order of R. Hays for $1,034.02, dated August 12th, 1869, indorsed by the payee with the bank's stamp of payment and stub showing this specific amount included.

B. H. Shoemaker, $18.60 for glass. This item appears in the cash book under date of July 31st, 1869, folio 121.

I produce the original voucher, being the receipt of B. H. Shoemaker, dated July 31st, 1869, for $27.60 for various items, including the amount of $18.60, with a memorandum thereon that the said

item was for the equipment of car No. 97, indorsed with the certificate of the superintendent that $18.60 of this item is for equipment.

I produce the original check of the company to the order of R. Hays for $311.69, dated August 6th, 1869, indorsed by the payee with the bank's stamp of payment and stub showing this specific amount included.

Cincinnati, Hamilton and Dayton railroad, $200, remodelling. This item appears in the cash book under date of July 28th, 1869, folio 121.

1640 I produce the original voucher, being receipt of the Cincinnati, Hamilton and Dayton for $1,495.35 for various items, including the amount of $200, with a memorandum that $200 of said item was for equipment of car No. 39, indorsed with the certificate of the superintendent that it is for equipment.

I produce the original check of the company to C. H. McLaren, general superintendent of the C. H. & D. R. R. for $1,495.35, dated July 20th, 1869, indorsed by payee and with the bank's stamp of payment.

James L. Howard & Co., $1,995.54, blankets. This item appears in the cash book under date of July 27th, 1869, folio 121.

I produce the original voucher, being receipt of James L. Howard & Co. for $1,995.54, dated July 27th, 1869, for this specific item, stated therein to be for equipment of cars 91, 97, 92, 103.

I produce the original check of the company to the order of James L. Howard & Co. for $1,995.54, dated July 20th, 1869, indorsed by the payee with the bank's stamp of payment.

Cincinnati Elastic Sponge Company, $563.80. This item appears in the cash book under date of July 21st, 1869, folio 121.

I produce the original voucher, being receipt of the Cincinnati Elastic Sponge Company for $563.80, dated July 21st, 1869, for this specific item stated therein to be for equipment of car No. 103, and indorsed by the superintendent that it is for the equipment of car No. 103. I find no check for this item.

Paton & Co., $152.18, terry. This item appears in the cash book under date of July 14th, 1869, folio 121.

I produce the original voucher, being receipt of Paton & Co. for $382.50, dated July 14th, 1869, for various items, including the item of $152.18, with a memorandum thereon that said item was for equipment of cars Nos. 97, 98 and 103, and indorsed by the superintendent that it is for equipment.

I produce the original check of the company to the order of Paton & Co. for $382.50, dated July 12th, 1869, indorsed by payee with the bank's stamp of payment.

1641 I also produce original treasurer's abstract of payments for the month of July, 1869, filed among the company's papers at that date, and including the various items for the month which I have hereinbefore given.

The next item on the ledger, folio 81, is a charge of $10,094.27, which includes the following items: Southern Transportation Company, $1,200 for the use of cars, 2, 5, 9, 10, 11, 12, 13 and 14 during the month of June.

I produce the original voucher, being receipt of W. H. Cottringer for $1,200 for this specific item, indorsed by the superintendent that it is for equipment. I find no check for this item.

Pennsylvania Railroad Company for $400, remodeling. This item appears in the cash book under date of July 12th, folio 120.

I produce the original voucher, being receipt of the Pennsylvania railroad for $3,317.39, dated July 2d, 1869, for various items, including the item of $400, indorsed with the certificate of the superintendent that $400 of this amount is for equipment of cars Nos. 20 and 25.

I produce the original check of the company to the order of E. H. Williams, general superintendent, for $3,317.39, dated July 12th, 1869, indorsed by the payee with the bank's stamp of payment.

H. Voight, $195 for glass. This item appears in the cash book under date of June 30th, 1869, folio 119.

I produce the original voucher, being the receipt of H. Voight for $468.08 for various items, including the item of $195, with a memorandum thereon that said item was for equipment of cars Nos. 103 and 97 and the indorsement of the superintendent that it is for equipment.

I produce the original check of the company to the order of H. Voight for $68.99, dated July 12th, 1869, indorsed by payee with the bank's stamp of payment.

Thomas Thompson's Sons & Co., $199.45. This item appears in the cash book under date of June 30th, 1869, folio 119.

1642 I produce original voucher, being receipt of Thomas Thompson Sons & Co., for $392.02, dated June 30th, 1869, for various items, including the item of $199.45, indorsed with the certificate of the superintendent that $199.45 of this item is for equipment.

I produce the original check of the company to the order of Thomas Thompson's Sons & Co. for $392.02, dated July 12th, 1869, indorsed by the payee and with the bank's stamp of payment.

Noblit, Brown, Noblit & Co., $616 for French plush. This item appears in the cash book under date of June 30th, 1869.

I produce the original voucher, being receipt of Noblit, Brown, Noblit & Co. for $934.50, dated June 30th, 1869, for various items, including the item of $616, with a memorandum thereon that said item was for equipment of cars Nos. 103, 97 and 67 and indorsed with the certificate of superintendent that it is for equipment.

I produce the original check of the company to the order of Noblit, Brown, Noblit for $934.50, dated July 12th, 1869, indorsed by the payee and with the bank's stamp of payment.

Doughten, Renshaw & Wilkins, $169.25, dry goods. This item appears in the cash book under date of June 30th, 1869, folio 119.

I produce the original voucher, being receipt of Doughten, Renshaw & Wilkins for $734.36, dated June 30th, 1869, for various items, including the item of $169.25, with a memorandum thereon that said item was for equipment of car No. 97, and indorsed with the certificate of superintendent that it was for equipment.

I produce the original check of the company to the order of

Doughten, Renshaw & Wilkins for $734.36, dated July 12th, 1869, indorsed by the payee and with the bank's stamp of payment.

James Spear & Co., $148.20 for stoves. This item appears in the cash book under date of June 30th, 1869, folio 119.

I produce original voucher, being receipt of James Spear & Co. for $202.70, dated June 30th, 1869, for various items, includ-
1643 ing the item of $148.20, with a memorandum that said item was for equipment of car No. 97, indorsed with the certificate of superintendent that it is for equipment.

I produce original check of the company to the order of J. E. Goodman for $202.70, dated July 8th, 1869, indorsed by the payee and with the bank's stamp of payment.

Jennie Norman, $19.20 for sewing. This item appears in the cash book under date of June 30th, 1869, folio 119.

I produce original voucher, being receipt of Jennie Norman for $47.60, dated June 30th, 1869, for various items, including the item of $19.20, with a memorandum thereon that said item was for equipment of car No. 97, indorsed with the certificate of superintendent that it is for equipment.

I produce the original check of the company to the order of R. Hays for $1,104.25, indorsed by the payee and with the bank's stamp of payment and stub showing this specific amount included, check No. 7514.

D. E. W. Stewart, $10, decorating. This item appears in the cash book under date of June 30th, 1869, folio 119.

I produce original voucher, being receipt of D. E. W. Stewart for $10, dated June 3d, 1869, for this specific item, stated therein to be for equipment of car No. 97.

I produce original check of the company to the order of R. Hays for $1,104.25, dated July 12th, 1869, indorsed by payee with the bank's stamp of payment and stub showing this specific amount included.

Lewis Thompson & Co., $36, wash-stand tops. This item appears in the cash book under date of June 30th, 1869, folio 119.

I produce the original voucher, being receipt of Lewis Thompson & Co. for $36, dated June 30th, 1869, for this specific item, indorsed by the superintendent to be for equipment of car No. 97.

I produce original check of the company to the order of R. Hays for $1,104.25, dated July 12th, 1869, indorsed by the payee with the bank's stamp of payment and stub showing this specific amount included.

1644 Hunnewell, Moore & Hunkin, $16 for spittoons. This item appears in the cash book under date of June 30th, 1869, folio 119.

I produce the original voucher, being receipt of Hunnewell, Moore & Hunkin for $16, dated June 30th, 1869, for this specific amount, with the indorsement of the superintendent that it is for equipment of car No. 103. I find no check for this amount.

Drown & Gibson, $156.47 for carpets. This item appears in the cash book under date of June 30th, 1869, folio 119.

I produce original voucher, being receipt of Drown & Gibson for

$156.47, dated June 30th, 1869, for this specific item, indorsed that it is for equipment of car No. 103. I find no check for this item.

John Shillito & Co., $37 for oilcloth. This item appears in the cash book under date of June 30th, 1869, folio 119.

I produce the original voucher, being the receipt of John Shillito for $37, dated June 11th, 1869, for this specific item, indorsed by the superintendent that it is for equipment of car No. 103. I find no check for this item.

Bart & Hickcox, $10.30 for door mats. This item appears in the cash book under date of June 30th, 1869, folio 119.

I produce the original voucher, being receipt of Bart & Hickcox for $10.30, dated June 30th, 1869, for this specific item, indorsed by the superintendent that it is for car No. 103. I find no check for this item.

Mitchell & Rammelsberg Furniture Company, $5, hassock. This item appears in the cash book under date of June 30th, 1869, folio 119.

I produce the original voucher, being receipt of Mitchell & Rammelsberg Furniture Company for $5 for this specific item, indorsed by the superintendent that it is for equipment of car No. 103. I find no check for this item.

Ohio and Mississippi Railroad Company $6,736.45, building car No. 103. This item appears in cash book under date of June 28th, 1869, folio 119.

I produce the original voucher, being receipt of the Ohio and Mississippi Railroad Company for $6,736.45, dated June 28th, 1869, for this specific item.

1645 I produce the original check of the company to the order of J. E. Goodman for $6,736.45, dated June 25th, 1869, and indorsed pay to the order of Charles S. Cone, treasurer, Ohio and Mississippi railway, J. Ernest Goodman; Charles S. Cone, treasurer, and bearing the bank's stamp of payment.

Post & Co., $139.95, window frames. This item appears in the cash book under date of June 26th, 1869, folio 119.

I produce the original voucher, being receipt of Post & Co. for $139.95, dated June 26th, 1869, for this specific item, indorsed by the superintendent that it is for equipment of car No. 103. I find no check for this item.

I also produce original treasurer's abstract of payments for the month of June, 1869, filed among the company's papers at that date, and including the various items for the month which I have hereinbefore given.

Next item on the ledger, folio 81, is a charge of $10,978.43, which includes the following items:—

B. H. Shoemaker, $45.40 for glass. This item appears in the cash book under date of June 12th, 1869, folio 118.

I produce the original voucher, being receipt of B. H. Shoemaker for $45.40, dated June 12th, 1869, for this specific item, bearing indorsement of superintendent that it is for equipment of car No. 97. I find no check for this item.

Lewis Thompson & Co., $37, wash-stand tops. This item appears in cash book under date of June 12th, 1869, folio 118.

I produce the original voucher, being receipt of Lewis Thompson & Co. for $37, dated June 12th, 1869, for this specific item, indorsed by the superintendent that it is for equipment of car No. 97.

I produce the original check of the company to the order of R. Hays, assistant superintendent, for $2,576.88, dated June 12th, 1869, endorsed by payee with the bank's stamp of payment and stub showing this specific amount included.

H. Voight, $325.13, glass. This item appears in the cash book under date of June 12th, 1869, folio 118.

I produce original voucher, being receipt of H. Voight for $491.63, dated June 12th, 1869, for various items, including
1646 the item of $325.13, with the indorsement of the superintendent that $325.13 is for equipment of car No. 103.

I produce the original check of the company to the order of R. Hays, for $2,576.88, dated June 12th, 1869, indorsed by payee with the bank's stamp of payment and stub showing this specific amount included.

William Akers & Co., $13.83 for spittoons. This item appears in the cash book under date of June 12th, 1869, folio 118.

I produce the original voucher, being the receipt of William Akers & Co. for $13.83, dated June 12th, 1869, for this specific item, stated therein to be for equipment of cars Nos. 91 and 92 at Columbus, and indorsed by the superintendent that it is for equipment. I find no check for this item.

Leedom & Shaw, $294.35, carpets. This item appears in the cash book under date of June 12th, 1869, folio 118.

I produce the original voucher, being receipt of Leedom & Shaw for $552.08, dated July 12th, 1869, for various items, including the item of $294.35, with a memorandum that it is for equipment of cars Nos. 91 and 92, indorsed by the superintendent that it is for equipment.

I produce the original check of the company to the order of R. Hays for $2,576.88, dated June 12th, 1869, indorsed by payee and with the bank's stamp of payment and stub showing this specific amount included.

Doughten, Renshaw & Wilkins, $438.50, sheeting and towels. This item appears in the cash book under date of June 12th, 1869, folio 118.

I produce the original voucher, being receipt of Doughten, Renshaw & Wilkins for $656.67, for various items, including the item of $438.50, with a memorandum thereon that said item was for equipment of cars Nos. 91, 92 and 103, and indorsed by the superintendent that it is for equipment.

I produce original check of the company, to the order of R. Hays, $2,576.88, dated June 12th, 1869, indorsed by the payee and with the bank's stamp of payment and stub showing this specific amount included.

R. Hays, $7.20, freight. This item appears in the cash book under date of June 12th, 1869, folio 118.

1647 I produce original voucher, being receipt of R. Hays for $26.05, dated June 11th, 1869, for various items, including the item of $7.20, and bearing the indorsement of the superintendent that $7.20 of this item is for equipment.

I produce original check of the company to the order of R. Hays for $2,576.88, dated June 12th, 1869, indorsed by the payee and with the bank's stamp of payment and stub showing this specific amount included.

Field & Hardy, $30.90, hardware. This item appears in the cash book under date of May 31st, 1869, folio 118.

I produce the original voucher, being receipt of Field & Hardy for $46.15 for various items, including the item of $30.90, with a memorandum thereon that said item was for equipment of cars Nos. 85, 86, 87, 88, 89, 90, 93, 94, 95, 96 and 97, and the superintendent's indorsement that it was for equipment.

I produce the original check of the company to the order of R. Hays for $2,576.88, dated June 12th, 1869, and indorsed by payee with the bank's stamp of payment and stub showing this specific amount included.

John Williams, $148.50, furniture checks. This item appears in the cash book under date of May 31st, 1869, folio 118.

I produce original voucher, being receipt of John Williams for $510.13, dated May 31st, 1869, for various items, including the item of $148.50, with a memorandum thereon that said item was for the equipment of cars Nos. 91, 92 and 103, and indorsed with certificate of superintendent that it is for equipment.

I produce the original check of the company to the order of R. Hays for $2,576.88, dated June 12th, 1869, indorsed by payee and with the bank's stamp of payment and stub showing this specific amount included.

Mary A. Harvey, $12 for sewing. This item appears in the cash book under date of May 31st, 1869, folio 118.

I produce the original voucher, being receipt of Mary A. Harvey for $27.65 for various items, including the item of $12, with a
1648 memorandum thereon that said item was for equipment of car No. 103, indorsed with the certificate of superintendent that it is for equipment.

I produce the original check of the company to the order of R. Hays for $2,576.88, dated June 12th, 1869, indorsed by payee and with the bank's stamp of payment and stub showing this specific amount included.

S. M. Atwell, $20, sewing. This item appears in the cash book under date of May 31st, 1869, folio 118.

I produce original voucher, being receipt of S. M. Atwell for $64.60, dated May 31st, 1869, for various items, including the item of $20, with a memorandum thereon that said item was for equipment of cars Nos. 91, 92 and 103, and indorsed with certificate of superintendent that it is for equipment.

I produce the original check of the company to the order of R. Hays for $2,576.88, dated June 12th, 1869, indorsed by the payee

with the bank's stamp of payment and the stub showing the specific amount included.

James Fraas & Co., $124.20, mattress covers. This item appears in the cash book under date of May 31st, 1869, folio 118.

I produce the original voucher, being receipt of James Fraas & Co. for $192.70, dated May 31st, 1869, for various items, including the item of $124.20, indorsed with the certificate of the superintendent that $124 20 of this item is for equipment. I find no check for this item.

J. B. Schroder, $3, lock. This item appears in cash book under date of May 31st, 1869, folio 118.

I produce the original voucher, being receipt of James Schroder for $3, dated May 31st, 1869, for this specific item, indorsed by the superintendent, as it is for equipment of car No. 103. I find no check for this item.

G. F. Hammer, $225, carving. This item appears in the cash book under date of May 31st, 1869, folio 118.

I produce the original voucher, being receipt of G. F. Hammer for $225, dated May 31st, 1869, for this specific item, stated therein to be for equipment of car No. 103, and indorsed by the superintendent that it is for equipment of car No. 103. I find no check for this item.

1649 Wilhelm & Newmann, $1,330.42, hardware. This item appears in the cash book under date of May 26th, 1869, folio 117.

I produce the original voucher, being receipt of Wilhelm & Newmann for $3,070.39, dated May 26th, 1869, for various items, including the item of $1,330.42, and bearing the indorsement of the superintendent that $1,330.42 of this item is for equipment.

I produce the original check of the company to the order of Wilhelm & Newmann, for $3,070.39, dated May 26th, 1869, indorsed by the payee with the bank's stamp of payment.

Pittsburgh, Fort Wayne and Chicago Railway Company, $200, remodeling. This item appears in the cash book under date of May 29th, 1869, folio 117.

I produce original voucher, being receipt of Pittsburgh, Chicago and Fort Wayne Railway Company for $681.08, dated —, for various items, including the item of $200, with the indorsement of the superintendent that $200 of this item is for equipment of car No. 11.

I produce the original draft of the Pittsburgh, Fort Wayne and Chicago Railway Company on J. F. Cottringer, treasurer of the Central Transportation Company for $681.08, and original check of the company to the order of J. F. Cottringer for the same amount, dated May 29th, 1869, indorsed by the payee and with the bank's stamp of payment.

James Howard & Co., $1,250.70, blankets. This item appears in the cash book under date of May 27th, 1869, folio 117.

I produce the original voucher, being receipt of James L. Howard & Co. for $1,308.70, dated May 27th, 1869, for various items, including

the item of $1,250.70, and indorsed with certificate of superintendent that $1,250.70 of this amount is for equipment.

Also produce original check of the company to the order of James L. Howard & Co. for $1,308.70, dated May 26th, 1869, indorsed by payee and with the bank's stamp of payment.

Paton & Co., $467, terry. This item appears in the cash book under date of May 18th, 1869, folio 117.

1650 I produce original voucher, being receipt of Paton & Co. for $467, dated May 18th, 1869, for this specific item, with indorsement of the superintendent that it is for equipment.

I produce original check of the company to the order of Paton & Co. for $467, dated May 17th, 1869, indorsed by the payee and with the bank's stamp of payment.

Jackson & Sharp, $200, remodeling. This item appears in the cash book under date of May 13th, 1869, folio 117.

I produce the original voucher, being receipt of Jackson & Sharp for $1,250, dated May 13th, 1869, for various items, including the item of $200, and indorsed with the certificate of the superintendent that $200 of this item is for equipment.

I produce the original check of the company to the order of Jackson & Sharp for $7,423.89, indorsed by the payee and with the bank's stamp of payment.

Jackson & Sharp, $4,805.30. Two silver palace sleeping cars, Nos. 89 and 90. This item appears in the cash book under date of May 13th, 1869, folio 117.

I produce the original voucher, being receipt of Jackson & Sharp for $4,805.30, dated May 13th, 1869, and stated therein to be for equipment of cars Nos. 89 and 90.

I produce original check of the company to the order of Jackson & Sharp for $7,423.89, dated May 13th, 1869, indorsed by the payee with the bank's stamp of payment.

Jackson & Sharp, $1,000 for cars Nos. 87 and 88. This item appears in the cash book under date of May 13th, 1869, folio 117.

I produce original voucher, being receipt of Jackson & Sharp for $1,000, dated May 13th, 1869, for this specific item.

I produce original check of the company to the order of Jackson & Sharp for $7,423.89, indorsed by the payee and with the bank's stamp of payment.

I also produce original treasurer's abstract of payment for the month of May, 1869, filed among the company's papers at that date, and including the various items for the month which I have hereinbefore given.

The next item on the ledger, folio 81, is a charge of $2,400, which includes the following items:

1651 Southern Transportation Company for the use of eight cars during the month of May, $1,200. This item appears in the cash book under date of April 30th, 1869, folio 116.

I produce the original voucher, being receipt of the Southern Transportation Company for $1,200, dated June 15th, 1869, for this specific item. I find no check for this item.

Southern Transportation Company for the use of eight cars during

April, $1,200. This item appears in the cash book under date of April 30th, 1869, folio 116.

I produce the original voucher, being receipt of the Southern Transportation Company for $1,200, dated May 12th, 1869, for this specific item. I find no check for this item.

The next item on the ledger, folio 81, is a charge of $56,592.20, which includes the following items:—

Philadelphia, Wilmington and Baltimore Railroad Company, $44.40, freight. This item appears in the cash book under date of May 12th, 1869, folio 115.

I produce original voucher, being receipt of Philadelphia, Wilmington and Baltimore railroad, dated May 12th, 1869, for various items, including the item of $44.40, with a memorandum thereon that said item was for equipment, indorsed with the certificate of superintendent that it is for equipment.

I produce the original check of the company to the order of R. Hays for $1,904.40, dated May 12th, 1869, indorsed by payee and with the bank's stamp of payment and stub showing this specific amount included.

William Groves & Co., $263, feathers for one hundred and ninety-two pillows. This item appears in the cash book under date of May 12th, 1869, folio 115.

I produce the original voucher, being receipt of William Groves & Co. for $526, dated May 12th, 1869, for various items, including the item of $263, indorsed with the certificate of the superintendent that $263 of this amount is for equipment.

I produce the original check of the company to the order of William Groves & Co. for $526, dated May 12th, 1869, indorsed by payee with the bank's stamp of payment.

1652 H. Voight $70.95, for glass. This item appears in the cash book under date of May 12th, 1869, folio 115.

I produce the original voucher, being receipt of H. Voight for $387.31, dated May 12th, 1869, for various items, including the item of $70.95, indorsed with certificate of superintendent that $70.95 of this item was for equipment.

I produce the original check of the company to the order of R. Hays for $1,904.40, dated May 12th, 1869, indorsed by payee, and with the bank's stamp of payment and stub showing this specific amount included.

C. Brintzinghoffer, $50.78, brushes. This item appears in the cash book under date of May 12th, 1869, folio 115.

I produce the original voucher, being receipt of C. Brintzinghoffer for $69.21, dated May 12th, 1869, for various items, including the item of $50.78, indorsed with certificate of the superintendent that $50.78 of this item is for equipment.

I produce the original check of the company to the order of R. Hays for $1,904.40, dated May 12th, 1869, indorsed by the payee with the bank's stamp of payment and stub showing this specific amount included.

Thomas Thompson's Sons & Co., $280 for plush. This item appears in the cash book under date of May 12th, 1869, folio 115.

I produce the original voucher, being receipt of Thomas Thompson's Sons & Co. for $280, dated May 12th, 1869, for this specific item, indorsed with certificate of superintendent that it is for equipment of car No. 103, O. & N. R. R.

I produce the original check of the company to the order of R. Hays for $1,904.40, dated May 12th, 1869, indorsed by payee and with the bank's stamp of payment and stub showing this specific amount included.

Doughten, Renshaw & Wilkins, $817.14, for dry goods. This item appears in the cash book under date of May 12th, 1869, folio 115.

I produce the original voucher, being receipt of Doughten, Renshaw & Wilkins for $817.14, for this specific item, stated therein to be for equipment of cars Nos. 89, 90, 93, 94, 95 and 96.

1653 I produce the original check of the company to the order of Doughten, Renshaw & Wilkins for $817.14, dated May 12th, 1869, indorsed by payee and with the bank's stamp of payment.

Pennsylvania Elastic Sponge Company, $360, mattresses. This item appears in the cash book under date of May 12th, 1869, folio 115.

I produce the original voucher, being receipt of the Pennsylvania Elastic Sponge Company for $360, dated May 12th, 1869, for this specific item, stated therein to be for equipment of car No. 79.

I produce the original check of the company to the order of the Pennsylvania Elastic Sponge Company for $360, dated May 12th, 1869, indorsed by the payee and with the bank's stamp of payment.

Jonah Woodruff, $6.33. This item appears in the cash book under date of May 12th, 1869, folio 115.

I produce original voucher, being receipt of Jonah Woodruff for $122.53, dated May 12th, 1869, for various items, including the item of $6.33, indorsed with the certificate of the superintendent that $6.33 of this item is for equipment. I find no check for this item.

Harlan & Hollingsworth Company, $19,021.33, cars Nos. 95 and 96. This item appears in the cash book under date of May 6th, 1869, folio 115.

I produce the original voucher, being receipt of Harlan & Hollingsworth Company for $19,021.33, dated May 6th, 1869, indorsed with certificate of superintendent that it is for equipment.

I produce the original check of the company to the order of Harlan & Hollingsworth Company for $19,021.33, dated May 6th, 1869, indorsed by the payee and with the bank's stamp of payment.

S. M. Atwell, $124.80 for sewing. This item appears in the cash book under date of April 30th, 1869, folio 115.

I produce the original voucher, being receipt of S. M. Atwell for $143.52, dated April 30th, 1869, for various items, including

1654 the item of $124.80, with a memorandum thereon that said item was for equipment of cars Nos. 87 and 88, 89 and 90, and 93 and 94, indorsed with the certificate of the superintendent that $124.80 of this item was for equipment.

I produce the original check of the company to the order of R

Hays for $1,904.40, dated May 12th, 1869, indorsed by the payee with the bank's stamp of payment and stub showing this specific amount included.

Jennie Norman, $37.40 for sewing. This item appears in the cash book under date of April 30th, 1869, folio 115.

I produce the original voucher, being receipt of Jennie Norman for 129.45, dated March 31st, 1869, for various items, including the item of $37.40, with a memorandum thereon that said item was for equipment of cars Nos. 91 and 92, indorsed with the certificate of the superintendent that $37.40 of this item is for equipment.

I produce original check of the company to the order of R. Hays for $1,904.40, dated May 12th, 1869, indorsed by the payee and with the bank's stamp of payment and stub showing this specific amount included.

Jackson & Sharp $5,000 on account of cars Nos. 89 and 90. This item appears in the cash book under date of April 26th, 1869, folio 114.

I produce the original voucher, being receipt of Jackson & Sharp for $5,000, dated April 24th, 1869, for this specific item.

I produce the original check of the company to the order of Jackson & Sharp for $5,000, dated April 24th, 1869, indorsed by payee and with the bank's stamp of payment.

Pennsylvania Railroad Company, $1,000 for remodeling. This item appears in the cash book under date of April 26th, 1869, folio 114.

I produce the original voucher, being receipt of the Pennsylvania railroad for $3,806.92, dated April 26th, 1869, for various items, including the item of $1,000, indorsed with certificate of superintendent that $1,000 of this item is for equipment of cars Nos. 1 and 4.

I produce the original check of the company to the order of E. H. Williams, general superintendent, for $3,806.92, dated
1655 April 24th, 1869, indorsed by the payee and with the bank's stamp of payment.

Pennsylvania Elastic Sponge Company, $360, mattresses. This item appears in the cash book under date of April 16th, 1869, folio 114.

I produce the original voucher, being receipt of the Pennsylvania Elastic Sponge Company for $360, dated April 16th, 1869, for this specific item.

I produce original check of the company to the order of the Pennsylvania Elastic Sponge Company for $360.00, dated April 16th, 1869, indorsed by the payee with the bank's stamp of payment.

Wilhelm & Newmann, $134.74, silver-plated ware. This item appears in the cash book under date of April 15th, 1869, folio 114.

I produce the original voucher, being receipt of Wilhelm & Newmann for $928.34, dated April 15th, 1869, for various items, including the item of $134.74, indorsed with certificate of superintendent that $134.74 of this amount is for equipment of cars Nos. 85, 86, 91 and 92.

I produce the original check of the company, to the order of Wil-

helm & Newmann, for $928.34, dated April 15th, 1869, indorsed by the payee and with the bank's stamp of payment.

Harlan & Hollingsworth Company, $19,021.33, car Nos. 93 and 94. This item appears in the cash book under date of April 13th, 1869, folio 114.

I produce original voucher, being receipt of Harlan & Hollingsworth Company for $19,021.33, dated April 13th, 1869, for this specific item.

I produce the original check of the company to the order of J. T. Gause, vice-president of the Harlan & Hollingsworth Company, for $19,021.33, dated April 13th, 1869, indorsed by the payee and with the bank's stamp of payment.

Jackson & Sharp, $10,000 on account of cars Nos. 87, 88, 89 and 90. This item appears in the cash book under date of April 12th, 1869, folio 114.

I produce original vouchers, being receipts of Jackson &
1656 Sharp for $10,000, dated April 12th, 1869, stated therein to be for equipment of cars Nos. 87, 88, 89 and 90.

I produce the original check of the company to the order of Jackson & Sharp for $10,000, dated April 12th, 1869, indorsed by the payee and with the bank's stamp of payment.

I also produce the original treasurer's abstract of payments for the month of April, 1869, filed among the company's papers at that date, and including the various items of the month I have hereinbefore mentioned.

The next item of the ledger, folio 81, is a charge of $1,350, Southern Transportation Company for use of cars during the month of January. This item appears in the cash book under date of March 31st, 1869, folio 113.

I produce the original voucher, being receipt of Southern Transportation Company for $1,350, dated March 16th, 1869, for this specific item.

I produce the original check of the company to the order of W. S. Cottringer for $856.75, dated March 30th, 1869, indorsed by payee and with the bank's stamp of payment and stub showing charge of $1,350 and credits of $423.95, balance of $856.75.

The next item on the ledger, folio 81, is a charge of $89,086.10, which includes the following items:

James Spear & Co., $150.10, stoves. This item appears in the cash book under date of April 30th, 1869, folio 113.

I produce the original voucher, being receipt of James Spear & Co. for $333.56, dated April 14th, 1869, for various items, including the amount of $150.10, indorsed with the certificate of the superintendent that $150.10 of this item is for equipment.

I produce the original check of the company to the order of James Spear & Co. for $333.56, dated April 14, 1869, indorsed by the payee and with the bank's stamp of payment.

Doughten, Renshaw & Wilkins, $325.08 for ticking and sheeting. This item appears in the cash book under date of April 30th, folio 113.

I produce the original voucher, being receipt of Doughten, Ren-

shaw & Wilkins for $1,109.39 for various items, including
1657 the item of $325.08, indorsed with certificate of superintendent that $325.08 of this amount is for equipment.

I produce original check of the company to the order of Doughten, Renshaw & Wilkins for $1,109.39, dated April 14th, 1869, indorsed by the payee and with the bank's stamp of payment.

Thomas Thompson's Sons & Co., $360 for plush and terry. This item appears in the cash book under date of April 30th, 1869, folio 113.

I produce the original voucher, being receipt of Thomas Thompson Sons & Co. for $685.43 for various items, including the item of $360, indorsed with certificate of superintendent that $360 of this item is for equipment.

I produce the original check of the company to the order of Thomas Thompson's Sons & Co. for $685.43, dated April 14th, 1869, indorsed by payee and with the bank's stamp of payment.

Jackson & Sharp, $1,710.65, cars 85 and 86. This item appears in the cash book under date of April 2d, 1869, folio 112.

I produce original voucher, being receipt of Jackson & Sharp for $1,710.65, dated April 2d, 1869, for this specific item. I find no check for this item.

Jackson & Sharp, $8,000 for cars 87 and 88. This item appears in the cash book under date of April 2d, 1869, folio 112.

I produce original voucher, being receipt of Jackson & Sharp for $8,000, dated April 2d, 1869, for this specific item.

I produce original checks of the company to the order of Jackson & Sharp, dated April 3d and April 5th, 1869, for $4,000 each, indorsed by the payee and with the bank's stamp of payment.

Jackson & Sharp, $200, balance of cars Nos. 79 and 80. This item appears in the cash book under date of April 2d, 1869, folio 112.

I produce original voucher, being receipt of Jackson & Sharp for $200, dated April 2d, 1869, for this specific item. I find no check for this item.

Mary A. Harvey, $24, sewing. This item appears in the cash book under date of March 30th, 1869, folio 112.

1658 I produce original voucher, being receipt of Mary A. Harvey for $89.40, dated March 31st, 1869, for various items, including the item of $24, indorsed by the superintendent that $24 of this item is for equipment of cars Nos. 91 and 92.

I produce original check of the company to the order of R. Hays for $210.85, indorsed by payee and with the bank's stamp of payment and stub showing this specific amount included.

Charles Brintzinghoffer, $16.27, brushes. This item appears in the cash book under date of March 31st, 1869, folio 112.

I produce original voucher, being receipt of C. Brintzinghoffer for $16.27, dated March 31st, 1869, for this specific item.

I produce original check of the company to the order of R. Hays for $210.85, dated April 14th, 1869, indorsed by the payee and with the bank's stamp of payment and stub showing the specific amount included.

Pennsylvania Railroad Company, $600, equipment of cars Nos.

48 and 50 and 2. This item appears in the cash book under date of March 31st, 1869, folio 112.

I produce original voucher, being receipt of Pennsylvania Railroad Company for $2,941.60, indorsed with certificate of superintendent that $600 of this item is for equipment.

I produce the original check of the company to the order of E. H. Williams, general superintendent, for $2,941.60, dated March 29th, 1869, indorsed by payee with the bank's stamp of payment.

Harlan & Hollingsworth Company, $200 for remodeling. This item appears in the cash book under date of March 30th, 1869, folio 112.

I produce original voucher, being receipt of Harlan & Hollingsworth Company for $1,538.99, dated March 30th, 1869, for various items, including the item of $200, indorsed with the certificate of superintendent that $200 of this amount is for equipment.

I produce the original check of the company to the order of Harlan & Hollingsworth Company for $2,710.97, dated March
1659 30th, 1869, indorsed by the payee and with the bank's stamp of payment.

Jackson & Sharp, $2,000 for cars Nos. 87 and 88. This item appears in the cash book under date of March 25th, 1869, folio 112.

I produce the original voucher, being receipt of Jackson & Sharp for $2,000, dated March 25th, 1869, for this specific item, and original check of the company to the order of Jackson & Sharp for $2,000, dated March 22d, 1869, indorsed by payee with the bank's stamp of payment.

Jackson & Sharp, $6,000, account of cars Nos. 87 and 88. This item appears in the cash book under date of March 22d, 1869, page 113.

I produce the original voucher, being receipt of Jackson & Sharp for $6,000, dated March 22d, 1869, for this specific item.

I produce the original check of the company to the order of Jackson & Sharp for $6,000, dated March 22d, 1869, indorsed by the payee and with the bank's stamp of payment.

Philadelphia, Wilmington and Baltimore Railroad Company, $19,500 for cars Nos. 83 and 84. This item appears in the cash book under date of March 11th, 1869, folio 112.

I produce original voucher, being receipt of Philadelphia, Wilmington and Baltimore Railroad Company for $19,500, dated March 15th, 1869, for this specific item.

I produce original check of the company to the order of H. F. Kenney, general superintendent, for $19,500, dated March 15th, 1869, indorsed by the payee and with the bank's stamp of payment.

I also produce original treasurer's abstract of payments for the month of March, 1869, filed among the company's papers at that date, and including the various items for the month which I have hereinbefore given.

Next item on the ledger, folio 81, is a charge of $1,350, Southern Transportation Company, for use of cars Nos. 1, 2, 5, 9, 10, 11, 12, 13 and 14 during the month of January, $150 each, $1,350. This

item appears in the cash book under date of February 27th, 1869, folio 111.

1660 I produce original voucher, being receipt of W. S. Cottringer for $1,350 for this specific item, dated February 18th, 1869.

I produce original check of the company to the order of W. S. Cottringer for $1,300, dated February 25th, 1869, indorsed by the payee with the bank's stamp of payment.

James Spear & Co., $7.25 for ventilators. This item appears in the cash book under date of March 12th, 1869, folio 111.

I produce the original voucher, being receipt of James Spear & Co. for $18.25, dated March, 1869, for various items, including the item of $7.25, with a memorandum thereon that said item was for equipment of cars Nos. 85 and 86, indorsed with certificate of superintendent that $7.25 of this amount is for equipment.

I produce the original check of the company to the order of R. Hays, assistant superintendent, for $671.01, dated March 12th, 1869, indorsed by the payee with the bank's stamp of payment and stub showing this specific amount included.

Leedom & Shaw, $11, carpet. This item appears in the cash book under date of March 12th, 1869, folio 111.

I produce the original voucher, being receipt of Leedom & Shaw for $395.89, dated March, 1869, for various items, including the item of $11, indorsed with certificate of superintendent that $11 of this item is for equipment.

I produce the original check of the company to the order of Leedom & Shaw for $395.89, indorsed by the payee and bearing the bank's stamp of payment.

Doughten, Renshaw & Wilkins, $204.05 for dry goods. This item appears in the cash book under date of March 12th, 1869, folio 111.

I produce original voucher, being receipt of Doughten, Renshaw & Wilkins for $1,838.12, dated March 12th, 1869, for various items, including the item of $204.05, indorsed with certificate of superintendent that $204.05 of this amount is for equipment.

I produce the original check of the company to the order of Doughten, Renshaw & Wilkins for $1,838.12, dated March

1661 12th, 1869, indorsed by the payee and with the bank's stamp of payment.

Hollister & Phelps, $69.56, findings. This item appears in the cash book under date of March 3d, 1869, folio 110.

I produce original voucher, being receipt of Hollister & Phelps for $846.16, dated March 3d, 1869, for various items, including the item of $69.56, indorsed with the certificate of superintendent that $69.56 of this item is for equipment. I find no check for this item.

Mary A. Harvey, $29 31, sewing. This item appears in cash book under date of February 27th, 1869, folio 110.

I produce original voucher, being receipt of Mary A. Harvey for $93.91, dated February 27th, 1869, for various items, including the item of $29.31, with a memorandum thereon that said item was for

equipment of cars Nos. 85 and 86, indorsed with the certificate of superintendent that $29.31 of this amount was for equipment.

I produce the original check of the company to the order of R. Hays for $671.01, dated March 12th, 1869, indorsed by the payee and with the bank's stamp of payment and stub showing this specific amount included.

Jennie Norman, $46.20 for sewing. This item appears in the cash book under date of February 27th, 1869, folio 110.

I produce the original voucher, being receipt of Jennie Norman for $145.90, dated February 27th, 1869, for various items, including the item of $46.20, indorsed with certificate of superintendent that $46.20 of this item is for equipment.

I produce original check of the company to the order of R. Hays for $671.01, dated March 12th, 1869, indorsed by the payee and with the bank's stamp of payment and stub showing this specific amount included.

R. Hays, $2.40, freight. This item appears in the cash book under date of February 27th, 1869, folio 110.

I produce original voucher, being receipt of R. Hays for $12.95, dated March, 1869, for various items, including the item of $2.40, indorsed with the certificate of the superintendent that $2.40 of this item was for equipment of cars Nos. 85 and 86.

1662 I produce original check of the company to the order of R. Hays for $671.01, dated March 12th, 1869, indorsed by the payee and with the bank's stamp of payment and stub showing this specific amount included.

William Akers & Co., $17.50 for spittoons. This item appears in the cash book under date of February 27th, 1869, folio 110.

I produce original voucher, being receipt of William Akers & Co. for $26.25, dated March, 1869, for various items, including the item of $17.50, with a memorandum thereon that said item was for cars numbered 85 and 86, indorsed with certificate of superintendent that $17.50 of this item is for equipment.

I produce original check of the company to the order of R. Hays for $671.01, dated March 12th, 1869, indorsed by the payee and with the bank's stamp of payment and stub showing this specific amount included.

Charles Brintzinghoffer, $16.18 for brushes. This item appears in the cash book under date of February 27th, 1869, folio 110.

I produce original voucher, being receipt of C. Brintzinghoffer for $29.11, dated February 27th, 1869, for various items, including the item of $16.18, indorsed with a memorandum that said item was for equipment of cars Nos. 83 and 84, and with the certificate of the superintendent that it was for equipment.

I produce original check of the company to the order of R. Hays for $671.01, dated March 12th, 1869, indorsed by the payee and with the bank's stamp of payment and stub showing this specific amount included.

Wilhelm & Newmann, $402.75, water-coolers, &c. This item appears in the cash book under date of February 25th, 1869, folio 110.

I produce original voucher, being receipt of Wilhelm & Newmann for $402.75, dated February 25th, 1869, for this specific item.

I produce original check of the company to the order of Wilhelm & Newmann for $402.75, dated February 25th, 1869, indorsed
1663 by the payee and with the bank's stamp of payment.

Jackson & Sharp, $8,000, account of cars Nos. 85 and 86. This item appears in the cash book under date of February 22d, 1869, folio 110.

I produce the original voucher, being receipt of Jackson & Sharp for $8,000, dated February 22d, 1869, for this specific item.

I produce original check of the company to the order of Jackson & Sharp for $8,000, dated February 22d, 1869, indorsed by the payee and with the bank's stamp of payment.

Jackson & Sharp, $200, remodeling. This item appears in the cash book under date of February 22d, 1869, folio 110.

I produce original voucher, being receipt of Jackson & Sharp for $1,250, dated February 22d, 1869, for various items, including the item of $200, indorsed with the certificate of superintendent that $200 of this amount is for equipment.

I produce the original check of the company to the order of Jackson & Sharp for $1,250, dated February 22d, 1869, indorsed by the payee and with the bank's stamp of payment.

Jackson & Sharp, $10,000 on account of cars Nos. 85 and 86. This item appears in the cash book under date of February 11th, 1869, folio 110.

I produce original voucher, being receipt of Jackson & Sharp for $10,000, dated February 11th, 1869, for this specific item, and original check of the company to the order of Jackson & Sharp for $10,000, dated February 13th, 1869, indorsed by the payee and with the bank's stamp of payment.

I also produce original treasurer's abstract of payments for the month of February, 1869, filed among the company's papers at that date, and including the various items for the month that I have hereinbefore given.

The next item on the ledger, folio 81, is a charge of $1,350, Southern Transportation Company for the use of cars 1, 2, 5, 9, 10, 11, 12, 13 and 14 for the month of December, $1,350. This item appears in the cash book under date of January 30th, 1869, folio 109.

1664 I produce the original voucher, being the receipt of W. S. Cottringer for $1,350, dated January 12th, 1869, for this specific item. I find no check for this item.

The next item on the ledger, folio 81, is a charge of $2,160.82, which includes the following items:—

Pennsylvania Elastic Sponge Company, $741.30 for mattresses. This item appears in the cash book under date of February 12th, 1869, folio 108.

I produce original voucher, being receipt of Pennsylvania Elastic Sponge Company for $741.30, dated February 12th, 1869, for this specific item.

I produce the original check of the company to the order of the Pennsylvania Elastic Sponge Company for $741.30, dated February

12th, 1869, indorsed by the payee and with the bank's stamp of payment.

Doughten, Renshaw & Wilkins, $278.57 for dry goods. This item appears in the cash book under date of February 12th, 1869, folio 108.

I produce the original voucher, being receipt of Doughten, Renshaw & Wilkins for $1,421.87, dated February 12th, 1869, for various items, including the item of $278.57, indorsed with the certificate of the superintendent that $278.57 of this item is for equipment of cars Nos. 85 and 86.

I produce original check of the company to the order of Doughten, Renshaw & Wilkins for $1,421.87, dated February 12th, 1869, indorsed by the payee and with the bank's stamp of payment.

Leedom & Shaw, $276.25 for carpets. This item appears in the cash book under date of February 12th, 1869, folio 108.

I produce original voucher, being receipt of Leedom & Shaw for $564.82, dated February, 1869, for various items, including the item of $276.25, indorsed with the certificate of the superintendent that $276.25 of this amount is for equipment of cars 85 and 86.

I produce original check of the company to the order of R. Hays for $1,558.79, dated February 12th, 1869, indorsed by the payee and with the bank's stamp of payment and stub showing this specific amount included.

1665 S. M. Atwell, $5 for sewing. This item appears in the cash book under date of February 12th, 1869, folio 108.

I produce original voucher, being receipt of S. M. Atwell for $54.38, dated January 30th, 1869, for various items, including the item of $5, with a memorandum thereon that said item was for equipment of cars Nos. 85 and 86, indorsed with the certificate of the superintendent that $5 of said item was for equipment.

I produce original check of the company to the order of R. Hays for $1,558.79, dated February 12th, 1869, indorsed by the payee and with the bank's stamp of payment and stub showing this specific amount included.

John Williams, $93.84 for furniture checks. This item appears in the cash book under date of February 12th, 1869, folio 108.

I produce the original voucher, being receipt of John Williams for $211.30, dated February, 1869, for various items, including the item of $93.84, indorsed with certificate of superintendent that $93.84 of this item was for equipment of cars Nos. 85 and 86.

I produce the original check of the company to the order of R. Hays for $1,558.79, dated February 12th, 1869, indorsed by payee with the bank's stamp of payment and stub showing this specific amount included.

A. T. Stewart & Co, $338.40 for terry. This item appears in the cash book under date of February 5th, 1869, folio 108.

I produce the original voucher, being receipt of A. T. Stewart & Co. for $338.40, dated February 5th, 1869, for this specific item.

I produce the original check of the company to the order of A. T. Stewart & Co. for $338.40, dated February 4th, 1869, indorsed by the payee and with the bank's stamp of payment.

Paton & Co., $168.26 for toweling. This item appears in the cash book under date of February 5th, 1869, folio 108.

I produce the original voucher, being receipt of Paton & Co. for $659.24, dated February 5th, 1869, for various items, including the item of $168.26, indorsed with certificate of superintendent that $168.26 is for equipment of cars Nos. 85 and 86.

1666 I produce the original check of the company to the order of Paton & Co. for $659.24, dated February 4th, 1869, indorsed by the payee and with the bank's stamp of payment.

Jennie Norman, $31.60, sewing. This item appears in the cash book under date of January 30th, 1869, folio 108.

I produce the original voucher, being the receipt of Jennie Norman for $73.60 for various items, including the item of $31.60, dated January 30th, 1869, with a memorandum thereon that said item was for equipment of cars Nos. 85 and 86, indorsed with the certificate of the superintendent that $31.60 of this item is for equipment.

I produce the original check of the company to the order of R. Hays for $237.05, dated February 12th, 1869, indorsed by the payee and with the bank's stamp of payment and stub showing this specific amount included.

Mary A. Harvey, $27.60, sewing. This item appears in the cash book under date of January 30th, 1869, folio 108.

I produce the original voucher, being receipt of Mary A. Harvey for $39.60, dated January 30th, 1869, for various items, including the item of $27.60, with a memorandum thereon that said item was for equipment of cars Nos. 85 and 86, and with indorsement of the superintendent that $27.60 was for equipment.

I produce the original check of the company to the order of R. Hays for $237.05, dated February 12th, 1869, indorsed by the payee and with the bank's stamp of payment and stub showing this specific amount included.

Jackson & Sharp, $200, remodeling. This item appears in the cash book under date of January 23d, 1869, folio 107.

I produce the original voucher, being the receipt of Jackson & Sharp for $1,250, dated January 23d, 1869, for various items, including the item of $200, indorsed with certificate of superintendent that $200 of this item is for equipment.

I produce the original check of the company to the order of Jackson & Sharp for $1,250, dated January 22d, 1869, indorsed by the payee and with the bank's stamp of payment.

I also produce the original treasurer's abstract of payment for the month of January, 1869, filed among the company's papers
1667 at that date, and including the various items for the month which I have hereinbefore given.

The next item on the ledger, folio 81, is a charge of $13,472.63, which includes the following items:

Southern Transportation Company for use of cars 1, 2, 5, 9, 10, 11, 12, 13 and 14 at $150 each, $1,350. This item appears in the cash book under date of December 31st, 1868, folio 106.

I produce the original voucher, being receipt of W. S. Cottringer for $1,350, dated December 15th, 1868, for this specific item.

I produce the original check of the company to the order of W. S. Cottringer for $616.37, dated December 28th, 1868, indorsed by payee and with the bank's stamp of payment and stub showing this amount to have been balance due on this account.

Paton & Co., $422.50 for blankets. This item appears in the cash book under date of January 7th, 1869, folio 106.

I produce the original voucher, being receipt of Paton & Co. for $1,742.95, dated January 7th, 1869, for various items, including the item of $422.50, indorsed with certificate of superintendent that $422.50 of this amount is for equipment.

I produce the original check of the company to the order of Paton & Co. for $1,742.95, indorsed by payee and with the bank's stamp of payment.

Pennsylvania railroad, $9,289.37 for cars Nos. 38, 22, 75 and 76. This item appears in the cash book under date of January 4th, 1869, folio 106.

I produce the original voucher, being receipt of Pennsylvania railroad for $10,289.37, dated January 4th, 1869, for various items, including the item of $9,289.37, indorsed with certificate of superintendent that $9,289.37 of this amount is for equipment.

I produce the original check of the company to the order of E. H. Williams, general superintendent, for $10,289.37, dated December 31st, 1868, indorsed by the payee and with the bank's stamp of payment.

1668 The Ohio and Mississippi Railway Company, $1,000, remodeling car No. 36. This item appears in the cash book under date of December 26th, 1868, folio 105.

I produce the original voucher, being receipt of the Ohio and Mississippi Railway Company for $2,000, dated December 26th, 1868, for various items, including the item of $1,000, indorsed with certificate of superintendent that $1,000 of this item is for equipment.

I produce original check of the company to the order of A. H. Lewis, V. P., for $2,000, dated December 24th, 1868, indorsed by the payee and with the bank's stamp of payment.

Pennsylvania Railroad Company, $1,210.76, remodeling. This item appears in the cash book under date of December 4th, 1868, folio 105.

I produce original voucher, being receipt of Pennsylvania Railroad Company for $3,876.81, dated December 4th, 1868, for various items, including the item of $1,210.76, indorsed with certificate of superintendent that $1,210.76 of this amount is for equipment.

I produce the original check of the company to the order of E. H. Williams, general superintendent, for $3,876.81, dated December 2d, 1868, indorsed by the payee and with the bank's stamp of payment.

Jackson & Sharp, $200, remodeling. This item appears in the cash book under date of December 1st, 1868, folio 105.

I produce original voucher, being receipt of Jackson & Sharp for

$1,264, dated December 1st, 1868, indorsed with certificate of superintendent that $200 of this item is for equipment.

I produce original check of the company to the order of Jackson & Sharp for $1,264, dated December 1st, 1868, indorsed by the payee and with the bank's stamp of payment.

I produce the original treasurer's abstract of payments for the month of December, 1868, filed among the company's papers at that date, and including the various items for that month which I have hereinbefore given.

The next item on the ledger is a charge of $1,350, folio 81:
1669 Southern Transportation Company, $1,350. This item appears in the cash book under date of November 30th, 1868, folio 104.

I produce the original voucher, being receipt of W. S. Cottringer for $1,350, dated November 17th, 1868, for this specific item.

I produce the original check of the company to the order of W. S. Cottringer, treasurer, for $880.35, dated November 30th, 1868, indorsed by the payee and with the bank's stamp of payment and stub showing this amount to be balance due on this account.

The next item on the ledger, folio 81, is a charge of $20,350, which includes the following items:

Southern Transportation Company, $1,350. This item appears in the cash book under date of October 31st, 1868, folio 102.

I produce the original voucher, being receipt of W. S. Cottringer for $1,350, dated October 16th, 1868, for this specific item.

I produce original check of the company to the order of W. S. Cottringer for $872.13, dated October 21st, 1868, indorsed by the payee and with the bank's stamp of payment and stub showing this specific amount included.

Bellefontaine Railway Company, $400, remodeling. This item appears in the cash book under date of November 10th, 1868, folio 101. I produce the original voucher, being receipt of Bellefontaine Railway Company for $1,750.27, dated November 12th, 1868, for various items, including the item of $400, and indorsed with the certificate of the superintendent that $400 of this item is for equipment.

I produce original check of the company to the order of George H. Russell, treasurer, for $3,524.91, dated November 9th, 1868, and indorsed by payee and with the bank's stamp of payment.

Bellefontaine Railway Company, $400, remodeling. This item appears in the cash book under date of November 10th, 1868, folio 101.

I produce original voucher, being receipt of Bellefontaine
1670 Railway Company for $1,774.64, dated November 10th, 1868, for various items, including the item of $400, indorsed with certificate of superintendent that $400 of this item is for equipment.

I produce the original check of the company to the order of George H. Russell, treasurer, for $3,524.91, dated November 9th, 1868, indorsed by payee and with the bank's stamp of payment.

Philadelphia, Wilmington and Baltimore railroad, $18,000 for

two sleeping cars, "City of Philadelphia" and "City of Baltimore," built and furnished as per agreement, $9,000 each. This item appears in the cash book under date of October 31st, 1868, folio 100.

I produce the original voucher, being receipt of A. Horner, treasurer, for $18,000, dated October 31st, 1868, for this specific item.

I produce the original check of the company to the order of H. F. Kenney, general superintendent, for $18,000, dated October 31st, 1868, indorsed by the payee and with the bank's stamp of payment.

Jackson & Sharp, $200, remodeling. This item appears in the cash book under date of October 26th, 1868, folio 100.

I produce the original voucher, being receipt of Jackson & Sharp for $1,250, dated October 26th, 1868, for various items, including the item of $200, indorsed with certificate of superintendent that $200 of this item is for equipment. I find no check for this item.

I produce the original treasurer's abstract of payments for the month of October, 1868, filed among the company's papers at that date, and including the various items for the month which I have hereinbefore given.

The next item on the ledger, folio 81, is a charge of $1,912.89, which includes the various items, as follows:

Southern Transportation Company, $1,050 for use of cars for the month of August, 1868. This item appears in the cash book under date of September 30th, 1868, folio 99.

I produce original voucher, being receipt of W. S. Cottringer, treasurer, for $1,050, dated September 19th, 1868, for this specific item.

1671 I produce the original check of the company to the order of W. S. Cottringer, treasurer, for $849.07, dated September 22d, 1868, indorsed by the payee and with the bank's stamp of payment and stub showing this check to have been in settlement of the account.

William Groves & Co., $260.40, feathers. This item appears in the cash book under date of October 10th, 1868, folio 98.

I produce the original voucher, being receipt of William Groves & Co., for $332.92, dated October 10th, 1868, for various items, including the item of $260.40, indorsed with the certificate of the superintendent that $260.40 of this item is for equipment.

I produce original check of the company to the order of W. Groves & Co. for $332.92, dated October 10th, 1868, indorsed by the payee and with the bank's stamp of payment.

Leedom & Shaw, $11 for mats. This item appears in the cash book under date of October 10th, 1868, folio 98.

I produce the original voucher, being receipt of Leedom & Shaw for $122, dated October 10th, 1868, for various items, including the item of $11, indorsed with the certificate of superintendent that $11 of this item is for equipment.

I produce original check of the company to the order of R. Hays for $1,073.67, indorsed by the payee and with the bank's stamp of payment and stub showing this specific amount included.

John Williams, $98, furniture check. This item appears in the cash book under date of September 30th, 1868, folio 98.

I produce original voucher, being receipt of John Williams for $226.46, dated September 30th, 1868, for various items, including the item of $98, with a memorandum thereon that said item was for equipment of cars Nos. 81 and 82, and indorsed by the superintendent that $98 of this amount is for equipment. I find no check for this item.

Charles Brintzinghoffer, $16.29, brushes. This item appears in the cash book under date of September 30th, 1868, folio 98.

I produce original voucher, being receipt of C. Brintzinghoffer for $21.25, for various items, including the item of $16.29, in-
1672 dorsed with the certificate of the superintendent that $16.29 of this item is for equipment of cars Nos. 81 and 82. I find no check for this item.

Jennie Norman, $65.20, sewing. This item appears in the cash book under date of September 30th, 1868, folio 98.

I produce original voucher, being receipt of Jennie Norman for $65.20, dated September 30th, 1868, for this specific item.

I produce original check of the company to the order of R. Hays for $1,082.57, dated September 11th, 1868, indorsed by payee, and with the bank's stamp of payment and stub showing this specific amount included.

Sarah Miller, $12, sewing. This item appears in the cash book under date of September 30th, 1868, folio 98.

I produce original voucher, being receipt of Sarah Miller for $55.70, dated September 30th, 1868, for various items, including the item of $12, indorsed with the certificate of the superintendent that $12 of this item is for equipment of cars Nos. 81 and 82.

I produce original check of the company to the order of R. Hays for $1,082.57, dated September 11th, 1868, indorsed by payee, and with the bank's stamp of payment and stub showing this specific amount included.

Indiana, Cincinnati and Lafayette Railroad Company, $200, rebuilding car No. 54. This item appears in the cash book under date of September 29th, 1868, folio 97.

I produce original voucher, being receipt of Indiana, Cincinnati and Lafayette Railroad Company for $2,400, dated September 21st, 1868, for various items, including the item of $200, indorsed by the superintendent that $200 of this item is for equipment.

I produce draft of W. T. Boaz, treasurer, to the order of the American Express Company for $2,400, indorsed by the Adams Express Company, and original check of the company to the order of J. F. Cottringer for $2,400, dated September 29th, 1868, indorsed by the payee and with the bank's stamp of payment.

Jackson & Sharp, $200, rebuilding car No. 28. This item appears in the cash book under date of September 24th, 1868, folio 97.

1673 I produce original voucher, being receipt of Jackson & Sharp for $1,249.36 for various items, including the item of $200, indorsed with the certificate of the superintendent that $200 of this item is for equipment of car No. 28.

I produce original check of the company to the order of Jackson & Sharp for $1,249.36, dated September 24th, 1868, indorsed by the payee and with bank's stamp of payment.

I also produce original treasurer's abstract of payments for the month of September, 1868, filed among the company's papers at that date, and including the various items for the month which I have hereinbefore given.

The next item on the ledger, folio 81, is a charge of $7,789.92, which includes the following items:

Southern Transportation Company, $1,090 for use of cars Nos. 1, 5, 9, 10, 11, 12, 13 and 14 during July. This item appears in the cash book under date of August 31st, 1868, folio 96. I find no voucher or check for this item.

Philadelphia, Wilmington and Baltimore Railroad Company, $200 for remodeling. This item appears on the cash book under date of September 11th, 1868, folio 96.

I produce original voucher, being receipt of Philadelphia, Wilmington and Baltimore railroad for $1,126.31, dated September 11th, 1868, for various items, including the item of $200, indorsed with certificate of superintendent that $200 of this amount is for equipment.

I produce the original check of the company to the order of H. F. Kenney, general superintendent, for $1,126.31, dated September 11th, 1868, indorsed by the payee and with the bank's stamp of payment.

James Spear & Co., $149.15, spittoons and stoves. This item appears in the cash book under date of September 11th, 1868, folio 96.

I produce the original voucher, being receipt of James Spear & Co. for $265.55, dated September 11th, 1868, for various items, including the item of $149.15, indorsed with the certificate of superintendent that $149.15 of this item is for equipment of cars Nos. 81 and 82.

1674 I produce the original check of the company to the order of R. Hays, assistant superintendent, for $1,082.57, dated September 11th, 1868, indorsed by payee and with the bank's stamp of payment and stub showing this specific amount included.

Doughten, Renshaw & Wilkins, $325.40 for toweling. This item appears in the cash book under date of September 11th, 1868, folio 96.

I produce original voucher, being receipt of Doughten, Renshaw & Wilkins for $325.40, dated September 10th, 1868, for this specific item.

I produce the original check of the company to the order of Doughten, Renshaw & Wilkins for $950.77, dated September 11th, 1868, indorsed by payee and with the bank's stamp of payment and stub showing this specific amount included.

Wilhelm & Newmann, $13.37 for glass and hardware. This item appears in the cash book under date of August 13th, 1868, folio 95.

I produce original voucher, being receipt of Wilhelm & New-

mann for $580.24, dated August 13th, 1868, for various items, including the item of $13.37, indorsed with certificate of superintendent that $13.37 of this amount is for equipment of cars Nos. 79 and 80.

I produce the original check of the company to the order of Wilhelm & Newmann for $580.24, dated August 13th, 1868, indorsed by payee and with the bank's stamp of payment.

Jackson & Sharp, $6,000, cars Nos. 79 and 80. This item appears in the cash book under date of August 12th, 1868, folio 95.

I produce the original voucher, being receipt of Jackson & Sharp for $6,000, dated August 12th, 1868, for this specific item.

I produce original checks of the company to the order of Jackson & Sharp, Nos. 3679 and 3683, for $3,000 each, dated August 11th and August 17th, 1868, indorsed by payee and with the bank's stamp of payment.

1675 Philadelphia, Wilmington and Baltimore Railroad Company, $12 for freight on two cars, Nos. 79 and 80. This item appears in the cash book under date of August 11th, 1868, folio 95.

I produce original voucher, being receipt of Philadelphia, Wilmington and Baltimore Railroad Company for $12, dated August 11th, 1868, for this specific item. I find no check for this item.

I also produce original treasurer's abstract of payments for the month of August, 1868, filed among the company's papers at that date, and including the various items for the month which I have hereinbefore given.

The next item on the ledger, folio 81, is a charge of $20,730.77, which includes the following items:

Southern Transportation Company for $920 for use of cars 1, 5, 9, 11, 12, 10 and 14.

I produce the original voucher, being receipt of W. S. Cottringer for $920 dated July 16th, 1868, for this specific item.

I produce original check of the company for $575.80 to the order of W. S. Cottringer, treasurer, dated July 16th, 1868, indorsed by the payee and with the bank's stamp of payment and stub showing this check to have been in settlement of account.

John Williams, $115, furniture checks. This item appears in the cash book under date of August 11th, 1868, folio 93.

I produce original voucher, being receipt of John Williams for $169.90, dated August 11th, 1868, for various items, including the item of $115, and indorsed with certificate of superintendent that $115 of this item is for equipment of cars Nos. 79 and 80.

I produce original check of the company to the order of R. Hays, superintendent, for $2,067.90, dated August 12th, 1868, indorsed by payee and with the bank's stamp of payment and stub showing this specific amount included.

Doughten, Renshaw & Wilkins, $312.07, towelings. This item appears in the cash book under date of August 11th, 1868, folio 93.

1676 I produce original voucher, being receipt of Doughten, Renshaw & Wilkins for $569.18, dated August 11th, 1868, for various items, including the item of $312.07, indorsed with the

certificate of superintendent that $312.07 of this item is for equipment of cars Nos. 79 and 80.

I produce the original check of the company to the order of R. Hays for $2,067.90, dated August 12th, 1868, indorsed by the payee and with the bank's stamp of payment and stub showing this specific amount included.

Leedom & Shaw, $108.87, carpets. This item appears in the cash book under date of August 11th, 1868, folio 93.

I produce the original voucher, being receipt of Leedom & Shaw for $168.12, dated August 11th, 1868, for various items, including the item of $108.87, indorsed with the certificate of superintendent that $108.87 of this item is for equipment of cars Nos. 79 and 80.

I produce the original check of the company to the order of R. Hays for $2,067.90, dated August 12th, 1868, indorsed by payee and with the bank's stamp of payment and stub showing this specific amount included.

James Spear & Co., $24, spittoons. This item appears in the cash book under date of August 11th, 1868, folio 93.

I produce original voucher, being receipt of James Spear & Co. for $117.83, dated August 11th, 1868, for various items, including the item of $24, indorsed with certificate of superintendent that $24 of this item is for equipment.

I produce original check of the company to the order of R. Hays for $2,067.90, dated August 12th, 1868, indorsed by payee and with bank's stamp of payment and stub showing this specific amount included.

William Groves & Co., $254.10 for pillows. This item appears in the cash book under date of August 11th, 1868, folio 93.

I produce the original voucher, being the receipt of William Groves & Co. for $349.65, dated August 11th, 1868, for various items, including the item of $254.10, indorsed with certificate of superintendent that $254.10, of this item is for equipment of cars Nos. 79 and 80.

1677 I produce the original check of the company to the order of R. Hays for $2,067.90, dated August 12th, 1868, indorsed by the payee and with the bank's stamp of payment and stub showing this specific amount included.

Thomas Thompson's Sons & Co., $189, rep. This item appears in the cash book under date of August 11th, 1868, folio 93.

I produce original voucher, being receipt of Thomas Thompson's Sons & Co. for $317.15, dated August 11th, 1868, for various items, including the item of $189, indorsed with the certificate of superintendent that $189 of this item is for equipment.

I produce original check of the company to the order of R. Hays for $2,067.90, dated August 12th, 1868, indorsed by the payee and with the bank's stamp of payment and stub showing this specific amount included.

Pennsylvania Railroad Company, $9,912.48 for building car No. 76. This item appears in the cash book under date of July 31st, 1868, folio 92.

I produce the original voucher, being receipt of the Pennsylvania railroad for $9,912.48, dated July 31st, 1868, for this specific item.

I produce original check of the company to the order of E. H. Williams, general superintendent, for $9,912.48, dated July 30th, 1868, indorsed by payee and with the bank's stamp of payment.

Pennsylvania Railroad Company, $800, remodeling. This item appears in the cash book under date of July 31st, 1868, folio 92.

I produce the original voucher, being receipt of the Pennsylvania railroad for $3,892.37, dated July 31st, 1868, for various items, including the item of $800, indorsed with the certificate of superintendent that $800 of this amount is for equipment.

I produce the original check of the company to the order of E. H. Williams, general superintendent, for $3,892.37, dated July 30th, 1868, indorsed by the payee and with the bank's stamp of payment.

1678 Samuel Haddon, $22, filling mattresses. This item appears in the cash book under date of July 31st, 1868, folio 92.

I produce the original voucher, being receipt of Samuel Haddon for $22, dated July 31st, 1868, for this specific item.

I produce the original check of the company to the order of R. Hays for $2,067.90, dated August 12th, 1868, indorsed by the payee and with the bank's stamp of payment and stub showing this specific amount included.

Jennie Norman, $75.40, sewing. This item appears in the cash book under date of July 30th, 1868, folio 92.

I produce the original voucher, being receipt of Jennie Norman for $75.40, dated July 30th, 1868, for this specific item.

I produce the original check of the company to the order of R. Hays for $2,067.90, dated August 12th, 1868, indorsed by the payee and with the bank's stamp of payment and stub showing this specific amount included.

C. Brintzinghoffer, $10.91 for brushes. This item appears in the cash book under date of July 30th, 1868, folio 92.

I produce the original voucher, being receipt of C. Brintzinghoffer for $10.91, dated July 26th, 1868, for this specific item.

I produce the original check of the company to the order of R. Hays for $2,067.90, dated August 12th, 1868, indorsed by payee and with the bank's stamp of payment and stub showing this specific amount included.

S. M. Atwell, $33.24, sewing. This item appears in the cash book under date of July 30th, 1868, folio 92.

I produce original voucher, being receipt of S. M. Atwell for $38.04, dated July 30th, 1868, for various items, including the item of $33.24, indorsed with certificate of superintendent that $33.24 of this item is for equipment of cars Nos. 79 and 80.

I produce original check of the company to the order of R. Hays for $2,067.90, dated August 12th, 1868, indorsed by the payee and with the bank's stamp of payment and stub showing this specific amount included.

1679 Mary A. Harvey, $19.20 for sewing. This item appears in the cash book under date of July 30th, 1868, folio 92.

I produce the original voucher, being receipt of Mary A. Harvey for $28.80, dated July 30th, 1868, for various items, including the item of $19.20, indorsed with certificate of superintendent that $19.20 of this item is for equipment of cars Nos. 79 and 80.

I produce the original check of the company to the order of R. Hays for $2,067.90, dated August 12th, 1868, indorsed by the payee and with the bank's stamp of payment and stub showing this specific amount included.

Jackson & Sharp, $7,525 for account building two sleeping cars, Nos. 79 and 80. This item appears in the cash book under date of July 29th, 1868, folio 92.

I produce the original voucher, being receipt of Jackson & Sharp for $7,525, dated July 29th, 1868, for this specific item.

I produce the original check of the company to the order of Jackson & Sharp for $6,947.15, dated July 29th, 1868, indorsed by the payee and with the bank's stamp of payment and stub showing for cars Nos. 79 and 80, on account $7,525, less bills $577.85, leaving $6,947.15.

W. H. Horstmann & Son, $9.50 for binding. This item appears in the cash book under date of July 14th, 1868, folio 92.

I produce the original voucher, being receipt of W. H. Horstmann & Son for $9.50, dated July 14th, 1868, for this specific item.

I produce the original check of the company to the order of R. Hays for $2,067.90, dated August 12th, 1868, indorsed by payee and with the bank's stamp of payment and stub showing this specific amount included.

Wilhelm & Newmann, $400, hardware and painting. This item appears in the cash book under date of July 14th, 1868, folio 92.

I produce the original voucher, being receipt of Wilhelm & Newmann for $990.75, dated July 14th, 1868, for various items, including the item of $400, indorsed with the certificate of superintendent that $400 of this item is for equipment of cars Nos. 14 and 45.

1680 I produce the original check of the company to the order of Wilhelm & Newmann, $990.75, dated July 14th, 1868, indorsed by the payee and with the bank's stamp of payment.

I also produce the original treasurer's abstract of payments for the month of July, 1868, filed among the company's papers at that date, and including the various items for the month which I have hereinbefore given.

The next item on the ledger, folio 81, is a charge of $1,898.27, which includes the following items:

Northern Central Railway Company, $500, rebuilding car No. 32. This item appears in the cash book under date of July 10th, 1868, folio 90.

I produce the original voucher, being receipt of the Northern Central Railway Company for $2,749.07, dated July 10th, 1868, for various items, including the item of $500, indorsed by the superintendent that $500 of this item is for equipment.

I produce the original check of the company to the order of J. N.

Du Barry, general superintendent, for $2,749.07, dated July 10th, 1863, indorsed by the payee and with the bank's stamp of payment.

Philadelphia and Erie Railroad Company, $790.77 for remodeling. This item appears in the cash book under date of July 10th, 1868, folio 90.

I produce original voucher, being receipt of Philadelphia and Erie Railroad Company for $804.27, dated July 10th, 1868, for various items, including the item of $790.77.

I produce the original check of the company to the order of A. L. Tyler, general superintendent, for $804.27, dated July 10th, 1868, indorsed by the payee and with the bank's stamp of payment.

Philadelphia, Wilmington and Baltimore railroad, $200 for rebuilding car 3. This item appears in the cash book under date of July 10th, 1868, folio 90.

I produce the original voucher, being receipt of Philadelphia, Wilmington and Baltimore railroad for $820.19, dated July 10th, 1868, for various items, including the item of $200, indorsed with certificate of superintendent that $200 of this item is for equipment of car No 3.

1681 I produce the original check of the company to the order of H. F. Kenney, general superintendent, for $820.19, dated July 10th, 1868, indorsed by the payee and with the bank's stamp of payment.

Mulliken & Feather, $7.50 for basins. This item appears in the cash book under date of June 30th, 1868, folio 90.

I produce the original voucher, being receipt of Mulliken & Feather for $7.50, dated June 20th, 1868, for this specific item. I find no check for this item.

Bellefontaine Railway Company, $200 for remodeling. This item appears in the cash book under date of June 26th, 1868, folio 90.

I produce the original voucher, being receipt of the Bellefontaine Railway Company for $1,691.37, dated June 26th, 1868, for various items, including the item of $200, indorsed with certificate of superintendent that $200 of this item is for equipment.

I produce the original check of the company to the order of Russell Elliot, Esq., $3,524.28, dated June 22d, 1868, indorsed by the payee, and with the bank's stamp of payment and stub showing this specific amount included.

Bellefontaine Railway Company, $200 for remodeling car No. 55. This item appears in the cash book under date of June 26th, 1868, folio 90.

I produce the original voucher, being receipt of the Bellefontaine Company for $1,833.01, dated June 26th, 1868, for various items, including the item of $200, indorsed by the certificate of the superintendent that $200 of this item is for equipment of car No. 55.

I produce the original check of the company to the order of Russell Eliot for $3,524.38, dated June 22d, 1868, indorsed by the payee and with the bank's stamp of payment and stub showing this specific amount included.

I also produce the original treasurer's abstract of payments for the month of June, 1868, filed among the company's papers at that

date, and including the various items for the month which I have hereinbefore given.

1682 The next item on the ledger, folio 81, is a charge of $4,694.80, which includes the following items:

Southern Transportation Company, $900 for use of cars during the month of April. This item appears in the cash book under date of May 30th, 1868, folio 89.

I produce the original voucher, being receipt of W. S. Cottringer for $900, dated May 15th, 1868, for this specific item.

I produce the original check of the company to the order of W. S. Cottringer, treasurer, for $622.37, dated May 20th, 1868, indorsed by the payee and with the bank's stamp of payment and stub showing this check to have been in settlement of account.

Doughten, Renshaw & Wilkins, $27, dry goods. This item appears in the cash book under date of June 11th, 1868, folio 88.

I produce the original voucher, being receipt of Doughten, Renshaw & Wilkins for $725.24, dated June 11th, 1868, for various items, including the item of $27, indorsed with the certificate of the superintendent that $27 of this item is for equipment of car No. 38.

I produce the original check of the company to the order of R. Hays for $2,026.03, dated June 11th, 1868, indorsed by the payee and with the bank's stamp of payment and stub showing this specific amount included.

Baltimore and Ohio Railroad Company, $3,767.80 for trucks. This item appears in the cash book under date of June 4th, 1868, folio 88.

I produce the original voucher, being receipt of the Baltimore and Ohio Railroad Company for $1,926.52, dated June 4th, 1868, for balance due, including the item of $3,767.80.

I produce the original check of the company to the order of J. J. Atkinson, treasurer, for $1,926.52, dated June 3d, 1868, indorsed by the payee and with the bank's stamp of payment.

I also produce the original treasurer's abstract of payments for the month of May, 1868, filed among the company's papers at that date, and including the various items for the month which I have hereinbefore given.

1683 The next item on the ledger, folio 81, is a charge of $31,399.09, which includes the following items:

Southern Transportation Company for use of cars Nos. 1, 2, 9, 10, 11 and 12 during the month of April, $900. This item appears in the cash book under date of April 30th, folio 86.

I produce the original voucher, being receipt of W. S. Cottringer, treasurer, for $900, dated May 15th, 1868, for this specific item.

I produce the original check of the company to the order of W. S. Cottringer, dated June 12th, 1868, for $609.05, indorsed by the payee and with the bank's stamp of payment and stub showing this check to have been in settlement of account.

Pittsburgh, Fort Wayne and Chicago Railway Company, for $25,191.09 for two state-room cars, Nos. 101 and 102. This item appears in the cash book under date of May 9th, 1868, folio 86.

I produce the original voucher, being receipt of the Pittsburgh,

Fort Wayne and Chicago Railway Company for $25,191.09, dated May 9th, 1868, for this specific item.

I produce the original check of the company to the order of J. N. McCullough, general superintendent, for $25,191.09, dated May 8th, 1868, indorsed by the payee and with the bank's stamp of payment.

James Fraas, $345 for mattresses. This item appears in the cash book under date of April 30th, 1868, folio 86.

I produce the original voucher, being receipt of James Fraas for $345, dated February 28th, 1868, for this specific item. I find no check for this item.

Jackson & Sharp, $2,000 for rebuilding car No. 33. This item appears in the cash book under date of April 27th, 1868, folio 85.

I produce the original voucher, being receipt of Jackson & Sharp for $2,678.24, dated April 27th, 1868, with a memorandum therein that it is approved by the superintendent.

I produce original check of the company to the order of Jackson & Sharp for $2,678.24, dated April 27th, 1868, indorsed by
1684 the payee and with the bank's stamp of payment.

Joseph Meyer & Son, $63, eight double car berths. This item appears in the cash book under date of April 18th, 1868, folio 85.

I produce the original voucher, being receipt of Joseph Meyer & Son for $63, dated April 15th, 1868, for this specific item. I find no check for this item.

Philadelphia, Wilmington and Baltimore Railroad Company, $292.63, rebuilding car No. 42. This item appears in the cash book under date of April 18th, 1868, folio 85.

I produce the original voucher, being receipt of the Philadelphia, Wilmington and Baltimore railroad for $1,292.63, dated April 18th, 1868, for various items, including the item of $292.63, approved by the superintendent and endorsed with certificate that $292.63 of this item is for equipment.

I produce the original check of the company to the order of H. F. Kenney, general superintendent, for $2,500, dated April 18th, 1868, indorsed by the payee and with the bank's stamp of payment and stub showing this check to have been in settlement of account.

Philadelphia, Wilmington and Baltimore Railroad Company, $207.37, rebuilding car No. 35. This item appears in the cash book under date of April 18th, 1868, folio 85.

I produce the original voucher, being receipt of Philadelphia, Wilmington and Baltimore Railroad Company for $1,207.37, dated April 18th, 1868, for various items, including the item of $207.37, indorsed by the superintendent and with certificate that $207.37 of this amount is for equipment.

I produce original check of the company to the order of H. F. Kenney, general superintendent, for $2,500, dated April 18th, 1868, indorsed by the payee and with the bank's stamp of payment, and stub showing this check to have been in settlement of account.

Wilhelm & Newmann, $2,400, hardware and silver-plating. This item appears in the cash book under date of April 14th, 1868, folio 85.

1685 I produce the original voucher, being receipt of Wilhelm & Newmann for $2,684.07, dated April 14th, 1868, for various items, including the item of $2,400, and indorsed with certificate of superintendent that $2,400 of this item is for equipment.

I produce the original check of the company to the order of Wilhelm & Newmann for $2,684.07, dated April 14th, 1868, indorsed by the payee and with the bank's stamp of payment.

I also produce the original treasurer's abstract of payments for the month of April, 1868, filed among the company's papers at that date, and including the various items for the month which I have hereinbefore given.

The next item on the ledger, folio 6, is a charge of $3,413.06, which includes the following items:—

Southern Transportation Company, $900 for the use of cars Nos. 1, 2, 9, 10, 11 and 12 during the month of March, 1868. This item appears in the cash book under date of March 31st, 1868, folio 84.

I produce the original voucher, being receipt of W. S. Cottringer, treasurer, for $900, dated March 31st, 1868, for this specific item.

I produce the original check of the company to the order of W. S. Cottringer for $557.25, dated April 14th, 1868, indorsed by the payee and with the bank's stamp of payment and stub showing this check to have been in settlement of account.

Pittsburgh, Fort Wayne and Chicago Railway Company, $592.17 for equipment of car No. 71. This item appears in the cash book under date of April 3d, 1868, folio 83.

I produce the original voucher, being receipt of the Pittsburgh, Fort Wayne and Chicago railway for $1,099.93, dated April 3d, 1868, for various items, including the item of $592.17, approved by the superintendent and indorsed that $592.17 of this item is for equipment.

I produce the original check of the company to the order of J. P. Farley, auditor Pittsburgh, Fort Wayne and Chicago Railway Company, for $1,099.93, dated April 2d, 1868, indorsed by the payee and with the bank's stamp of payment.

1686 Jonah Woodruff, $31.50. This item appears in the cash book under date of March 31st, 1868, folio 83.

I produce the original voucher, being receipt of Jonah Woodruff for $31.50, dated March 31st, 1868, for this specific item.

Bellefontaine Railway Company, $1,379.86, trucks for car No. 29. This item appears in the cash book under date of March 21st, 1868, folio 83.

I produce the original voucher, being receipt of the Bellefontaine Railway Company for $1,569.75, dated March 21st, 1868, for various items, including the item of $1,379.86, approved by the superintendent and indorsed that $1,379.86 of this amount is for equipment.

I produce the original check of the company to the order of J. L. Gozad, general superintendent, for $1,569.75, dated March 18th, 1868, indorsed by the payee and with the bank's stamp of payment.

Pittsburgh, Fort Wayne and Chicago Railway Company, $248.96,

remodeling car No. 51. This item appears in the cash book under date of March 17th, 1868, folio 83.

I produce the original voucher, being receipt of Pittsburgh, Fort Wayne and Chicago Railway Company for $1,987.06, dated March 17th. 1868, for various items, including the item of $248.96, approved by the superintendent and indorsed that $248.96 of this item is for equipment.

I produce the original check of the company to the order of J. F. McCullough, general superintendent, for $3,385, dated March 12th, 1868, indorsed by the payee and with the bank's stamp of payment and stub showing this check to have been in settlement of account.

Wilhelm & Newmann, $260.57 for hardware. This item appears in the cash book under date of March 17th, 1868, folio 83.

I produce the original voucher, being receipt of Wilhelm & Newmann for $794.59, dated March 17th, 1868, for various items, including the item of $260.57, approved by the superintendent and indorsed that $260.57 of this item is for equipment.

1687 I produce the original check of the company to the order of Wilhelm & Newmann for $794.59, dated March 17th, 1868, indorsed by the payee and with the bank's stamp of payment.

I also produce treasurer's abstract of payments for the month of March, 1868, filed among the company's papers at that date, and including the various items for the month which I have hereinbefore given.

The next item on the ledger, folio 6, is a charge of $2,652.28, which includes the following items:—

Southern Transportation Company, $810 in full for use of cars Nos. 1, 2, 9, 10, 11 and 12 during the month of February, 1868. This item appears in the cash book under date of February 29th, folio 82.

I produce the original voucher, being receipt of W. S. Cottinger for $810 for this specific item, dated February 29th, 1868.

I produce original check of the company to the order of W. S. Cottringer, treasurer, for $193.63, dated March 14th, 1868, indorsed by the payee and with the bank's stamp of payment and stub showing this check to have been in settlement of account.

Jonah Woodruff, $43.57. This item appears in the cash book under date of March 7th, 1868, folio 82.

I produce original voucher, being receipt of Jonah Woodruff for $543.94, dated March 11th, 1868, for various items, including the item of $43.57, indorsed with the certificate that $43.57 of this item is for equipment. I find no check for this item.

W. H. Carryl, $314 for Mexican cloth. This item appears in the cash book under date of March 7th, 1868, folio 82.

I produce the original voucher, being receipt of W. H. Carryl for $350.55, dated March 7th, 1868, for various items, including the item of $314, indorsed with a certificate that $314 of this item is for equipment. I find no check for this item.

Thomas Thompson's Sons & Co., $59.33 for reps. This item appears in the cash book under date of March 7th, 1868, folio 82.

1688 I produce original voucher, being receipt of Thomas Thompson's Sons & Co. for $256.50, dated March 7th, 1868, for various items, including the item of $59.33, indorsed with the certificate that $59.33 of this item is for equipment. I find no check for this item.

Thomas H. Denney, $30 for lettering and striping. This item appears in the cash book under date of February 29th, 1868, folio 81.

I produce the original voucher, being receipt of Thomas Denney, dated February 29th, 1868, for $30 for this specific item. I find no check for this item.

Wilhelm & Newmann, $995 62 for hardware. This item appears in the cash book under date of February 14th, 1868, folio 81.

I produce original voucher, being receipt of Wilhelm & Newmann, for $1,276.16, dated February 14th, 1868, for various items, including the item of $995.64, indorsed with the certificate that $995.64 of this item is for construction.

I produce the original check of the company to the order of Wilhelm and Newmann for $1,276.16, dated February 15th, 1868, indorsed by payee and with the bank's stamp of payment.

B. H. Shoemaker, $308, glass. This item appears in the cash book under date of February 13th, 1868, folio 81.

I produce the original voucher, being receipt of B. H. Shoemaker for $347.76, dated February 13th, 1868, for various items, including the amount of $308, indorsed with the certificate that $308 of this item is for equipment. I find no check for this item.

William Groves & Co., $91.74, feathers. This item appears in the cash book under date of February 13th, 1868, folio 81.

I produce the original voucher, being receipt of William Groves & Co. for $183.47, dated February 13th, 1868, for various items, including the item of $91.74, indorsed with the certificate of the superintendent that $91.74 of this item is for equipment. I find no check for this item.

1689 I also produce original treasurer's abstract of payments for the month of February, 1868, filed among the company's papers at that date, and including the various items for the month which I have hereinbefore given.

The next item on the ledger, folio 6, is a charge of $1,453.90, which includes the following items:

Southern Transportation Company for use of cars Nos. 1, 2, 5, 11 and 12 during the month of January, 1868.

I produce the original voucher, being receipt of W. S. Cottringer for $750, dated January 31st, 1868, for this specific item.

I produce original check of the company to the order of W. S. Cottringer, treasurer, for $730, dated February 23d, 1868, indorsed by the payee and with the bank's stamp of payment and stub showing this check to have been in settlement of account.

Jonah Woodruff, $39 for carpets.

I produce the original voucher, being the receipt of Jonah Woodruff for $756.51, dated January 31st, 1868, for various items, includ-

ing the item of $39, indorsed with certificate that $39 of this item was for equipment. I find no check for this item.

Thomas Thompson Sons & Co., $286.87 for carpets.

I produce the original voucher, being receipt of Thomas Thompson Sons & Co. for $548.19, dated January 9th, 1868, for various items, including the item of $286.87, indorsed with certificate of superintendent that $286.87 of this item is for equipment.

I produce the original check of the company to the order of R. Hayes, assistant superintendent, for $1,533.37, dated January 18th, 1868, indorsed by payee and with the bank's stamp of payment and stub showing this specific amount included.

Doughten, Renshaw & Wilkins, $228.87 for dry goods. This item appears in the cash book under date of January 9th, 1868, folio 79.

I produce the original voucher, being receipt of Doughten, Renshaw & Wilkins for $985.18, dated January 9th, 1868, for various items, including the item of $228.87, indorsed with certificate that $228.87 of this amount is for equipment.

1690 I produce the original check of the company to the order of R. Hayes, assistant superintendent, for $1,533.37, dated January 18th, 1868, indorsed by the payee and with the bank's stamp of payment and stub showing this specific amount included.

Leedom & Shaw, $56.40 for carpets. This item appears in the cash book under date of January 9th, 1868, folio 79.

I produce the original voucher, being the receipt of Leedom & Shaw for $390.43, dated January 9th, 1868, for various items, including the item of $56.40, indorsed with certificate that $56.40 of this item is for equipment.

I produce the original check of the company to the order of R. Hayes, assistant superintendent, for $696.81, dated January 18th, 1868, indorsed by payee with the bank's stamp of payment and stub showing this specific amount included.

William Groves & Co., $92.76 for feathers. This item appears in the cash book under date of January 9th, 1868, folio 79.

I produce original voucher, being receipt of William Groves & Co. for $246.58, dated January 9th, 1868, for various items, including the item of $92.76, indorsed with certificate that $92.76 of this item is for equipment of cars Nos. 77 and 78.

I produce the original check of the company to the order of R. Hayes, assistant superintendent, for $696.81, dated January 18th, 1868, indorsed by the payee and with the bank's stamp of payment and stub showing this specific amount included.

I also produce the original treasurer's abstract of payments for the month of January, 1868, filed among the company's papers at that date, and including the various items for the month which I have hereinbefore given.

The next item on the ledger, folio 6, is a charge of $550. Southern Transportation Company, $550 for use of cars Nos. 1, 2, 5, 11 and 12 during the month of December, 1867. This item appears in the cash book under date of December 31st, 1867, folio 78.

I produce the original voucher, being receipt of W. S. Cottringer

for $550, dated January 31st, 1868, for this specific item. I find no check for this item.

1691 The next item on the ledger, folio 6, is a charge of $26,274.54, which includes the following items:

Jonah Woodruff, $1,917.63 on account of car No. 38. This item appears in the cash book under date of January 9th, 1868, folio 78.

I produce the original voucher, being the receipt of —— —— for $1,917.63, dated January 9th, 1868, for this specific item. Find no check for this item.

Benjamin H. Shoemaker, $16.84 for glass. This item appears in the cash book under date of January 9th, 1868, folio 78.

I produce the original voucher, being the receipt of Benjamin H. Shoemaker for $16.84, dated January 9th, 1868, for this specific item, indorsed by the superintendent that it is for equipment of cars No. 77 and No. 78. Find no check for this item.

Wilhelm & Neumann, hardware and silver plating, $2,323.10. This item appears in the cash book under date of January 8th, 1868, folio 78.

I produce the original voucher, being receipt of Wilhelm & Neumann for $2,323.10, dated January 8th, 1868, for this specific item.

I produce the original check of the company to the order of Wilhelm & Neumann for $2,323.10, dated January 8th, 1868, indorsed by the payee and with the bank's stamp of payment.

Charles Brintzinghoffer, $9.75 for brushes. This item appears in the cash book under date of December 31st, 1867, folio 77.

I produce the original voucher, being the receipt of Charles Brintzinghoffer for $9.75, dated December 28th, 1867, for this specific item, indorsed by the superintendent that this is for equipment of cars Nos. 77 and 78.

Sarah Miller, $48 for sewing. This item appears in the cash book under date of December 31st, 1867, folio 77.

I produce the original voucher, being the receipt of Sarah Miller for $84, dated December 31st, 1867, for various items, including the item of $48, with a memorandum thereon that said item was

1692 for equipment of cars Nos. 77 and 78, and indorsed with the certificate of the superintendent that $48 of this item is for equipment. Find no check for this item.

S. M. Atwell, $19 for sewing. This item appears in the cash book under date of December 31st, 1867, folio 77.

I produce the original voucher, being receipt of S. M. Atwell for $56.48, dated December 31st, 1867, for various items, including the item of $19, indorsed by the certificate of the superintendent that $19 of this item was for equipment of cars Nos. 77 and 78. I find no check for this item.

Jennie Norman, $22.60 for sewing. This item appears in the cash book under date of December 31st, 1867, folio 77.

I produce the original voucher, being receipt of Jennie Norman for $35.80, dated December 31st, 1867, for various items, including the item of $22.60, indorsed with the certificate of superintend-

ent that $22.60 of this item is for equipment. I find no check for this item.

Pennsylvania railroad, $8,189.57 for building silver palace sleeping car No. 75. This item appears in the cash book under date of December 20th, 1867, folio 77.

I produce the original voucher, being receipt of Pennsylvania Railroad Company for $8,189.57, dated December 20th, 1867, for this specific item.

I produce the original check of the company to the order of E. H. Williams, general superintendent, for $8,189.57, dated December 20th, 1867, indorsed by the payee and with the bank's stamp of payment.

Wilhelm & Neumann, $91.74 for hardware. This item appears in the cash book under date of December 12th, 1867, folio 77.

I produce the original voucher, being receipt of Wilhelm & Neumann for $946.19, dated December 12th, 1867, for various items, including the item of $91.74.

I produce the original check of the company to the order of Wilhelm & Neumann for $946.19, dated December 16th, 1867, indorsed by the payee and with the bank's stamp of payment.

Pittsburgh, Fort Wayne and Chicago Railway Company for building car No. 69, $13,636.31. This item appears in cash book under date of December 11th, 1867, folio 77.

1693 I produce the original voucher, being receipt of Pittsburgh, Fort Wayne and Chicago Railway Company for $13,636.31, dated December 9th, 1867, for this specific item.

I produce the draft of the Pittsburgh, Fort Wayne and Chicago Railway Company, indorsed across the face, paid by J. F. Cottringer, treasurer, for $13,636.31.

I also produce original check of the company to the order of I. Wiegand, Jr., cashier, bearer, for $13,636.31, bearing the bank's stamp of payment.

I also produce the original treasurer's abstract of payments for the month of December, 1867, filed among the company's papers at that date, and including the various items for the month which I have hereinbefore given.

The next item on the ledger, folio 6, is a charge of $538.58, which includes the following items:—

Southern Transportation Company, $450 for use of cars Nos. 5, 11 and 12 during month of November, 1867. This item appears in the cash book under date of November 30th, 1867, folio 76.

I produce the original voucher, being the receipt of the Southern Transportation Company, W. S. Cottringer, treasurer, for $450, dated November 30th, 1867, for this specific item.

I also produce the original check of the company to the order of W. S. Cottringer, treasurer, for $450, dated December 11th, 1867, indorsed by the payee with the bank's stamp of payment.

L. Thompson & Co., $15 for wash-stand top. This item appears in the cash book under date of November 30th, 1867, folio 76.

I produce the original voucher, being the receipt of L. Thompson & Co. for $15, dated November 30th, 1867, for this specific item, stated

therein to be for equipment of car No. 77, and indorsed by the superintendent that it is for equipment. Find no check for this item.

John Williams, $73.58 for furniture check. This item appears in the cash book under date of November 30th, 1867, folio 76.

1694 I produce the original voucher, being receipt of John Williams for $73.58, dated November 30th, 1867, for this specific item, stated therein to be for equipment of cars Nos. 77 and 78, and indorsed by the superintendent that it is for equipment. I find no check for this item.

I produce the original treasurer's abstract of payments for the month of November, 1867, filed among the company's papers at that date, and including the various items for the month which I have hereinbefore given.

The next item on the ledger, folio 6, is a charge of $13,959.80, which includes the following items:—

Jonah Woodruff, $9.80 for work on car No. 69. This item appears in the cash book under date of November 9th, 1867, folio 74.

I produce the original voucher, being the receipt of Jonah Woodruff for $285.10, dated November 9th, 1867, for various items, including the amount of $9.80, indorsed with the certificate that $9.80 of this item is for equipment.

I produce the original check of the company to the order of Jonah Woodruff for $6,471.48, dated November 9th, 1867, indorsed by the payee and the bank's stamp of payment and stub showing this specific amount included.

Southern Transportation Company, $450 for use of cars Nos. 5, 11 and 12, during the month of October. This item appears in the cash book under date of October 31st, 1867, folio 74.

I produce the original voucher, being the receipt of W. S. Cottringer, treasurer, for $450, dated October 31st, 1867, for this specific item.

I produce the original check of the company to the order of W. S. Cottringer, treasurer, for $450, dated October 31st, 1867, indorsed by the payee and with the bank's stamp of payment.

Dykeman & Co., $6,500 on account of cars Nos. 71 and 72. This item appears in the cash book under date of October 9th, 1867, folio 74.

I produce the original voucher, being receipt of Dykeman & Co. for $6,500, dated June 7th, 1867, for this specific item, and

1695 paid note at four months, dated June 7th, 1867, for $6,500, due October 7th and 10th, 1867, and checks of the company to the order of O. W. Childs, numbered 759 and 760, for $500 and $6,000 respectively, indorsed by the payee and with the bank's stamp of payment.

Dyckman & Co., $7,000, balance due on cars Nos. 73 and 74. This item appears in the cash book under date of October 9th, 1867, folio 74.

I produce the original voucher, being receipt of Dyckman & Co., being their paid draft for this specific item.

I also produce the original treasurer's abstract of payments for the

month of October, 1867, filed among the company's papers at that date, and including the various items for the month which I have hereinbefore given.

Next item on the ledger, folio 6, is a charge of $17,818.72, which includes the following items:

Jonah Woodruff, $8.32, camp stools. This item appears in the cash book under date of October 8th, 1867, folio 73.

I produce the original voucher, being receipt of Jonah Woodruff for $8.32, dated October 8th, 1867, for this specific item.

I produce the original check of the company to the order of Jonah Woodruff, general superintendent, for $5,485.56, dated October 8th, 1867, indorsed by the payee and with the bank's stamp of payment and stub showing the specific amount included.

Southern Transportation Company, $450 for use of cars Nos. 5, 11 and 12 during September. This item appears in the cash book under date of October 1st, 1867, folio 73.

I produce the original voucher, being the receipt of W. S. Cottringer for $450, dated October 1st, 1867, for this specific item.

I also produce the original check of the company to the order of W. S. Cottringer for $450, dated October 1st, 1867, for this specific item, indorsed by the payee and with the bank's stamp of payment.

B. H. Shoemaker for $541.26 for glass. This item appears in the cash book under date of September 19th, 1867, folio 72.

1696 I produce original voucher, being receipt of B. H. Shoemaker for $541.26 for this specific item, indorsed by the superintendent that it is for equipment of cars Nos. 75 and 76.

I produce the original check of the company to the order of B. H. Shoemaker for $1,040.36, dated September 19th, 1867, indorsed by the payee and with the bank's stamp of payment and stub showing this specific amount included.

Dyckman & Co., $5,431.22, account of new cars Nos. 73 and 74. This item appears in the cash book under date of September 16th, 1867, folio 72.

I produce the original voucher, being receipt of Dyckman & Co. for $7,000, indorsed on the back, "Received payment in full, Philadelphia, September 16th, 1867, $5,431.22; G. R. Dyckman & Co." I find no check for this item.

William M. Oglesby, $12.90, lead pipe. This item appears in the cash book under date of September 12th, folio 72.

I produce the original voucher, being receipt of W. M. Oglesby for $12.90, dated September 12th, 1867, for this specific item, stated thereon to be for equipment of car No. 76. I find no check for this item.

Wilhelm & Neumann, $11,375.02, equipment of cars Nos. 69, 75 and 76. This item appears in the cash book under date of September 12th, 1867, folio 72.

I produce the original voucher, being receipt of Wilhelm & Neumann, for $11,375.02 for this specific item, dated September 12th, 1867.

I produce the original check of the company to the order of Wilhelm & Neumann, dated September 12th, 1867, for $4,947.50; also

September 12th, 1867, to the order of Wilhelm & Neumann $5,000, indorsed by the payee with the bank's stamp of payment.

I also produce original treasurer's abstract of payments for the month of September, 1867, filed among the company's papers at that date, and including the various items for the month which I have hereinbefore given.

The next item on the ledger, folio 6, is a charge of $10,210.35, which includes the following items:

Pennsylvania Railroad Company, $9,013.92, building new
1697 car No. 70. This item appears in the cash book under date of September 9th, 1867, folio 70.

I produce the original voucher, being receipt of the Pennsylvania Railroad Company for $9,013.92, dated September 10th, 1867, for this specific item.

I produce original check of the company to the order of E. H. Williams, general superintendent, for $9,013.92, dated September 9th, 1867, indorsed by the payee and with the bank's stamp of payment.

Southern Transportation Company, $450, use of cars Nos. 5, 11 and 12 for the month of August, 1867. This item appears in the cash book under date of August 31st, 1867, folio 70.

I produce the original voucher, being receipt of W. S. Cottringer, treasurer, for $450, dated August 31st, 1867, for this specific item.

I produce the original check of the company to the order of W. S. Cottringer for $450, dated August 31st, 1867, indorsed by the payee and with the bank's stamp of payment.

S. M. Atwell, $55.68, sewing. This item appears in the cash book under date of August 31st, 1867, folio 70.

I produce the original voucher, being receipt of S. M. Atwell for $79.20, dated August 31st, 1867, for various items, including the item of $55.68, with memorandum thereon that said item was for equipment, indorsed with certificate of superintendent that $55.68 of this amount is for equipment. I find no check for this item.

William Groves & Co., $281 for pillows. This item appears in the cash book under date of August 31st, 1867, folio 70.

I produce the original voucher, being receipt of William Groves & Co. for $370, dated September 3d, 1867, for various items, including the item of $281, with a memorandum thereon that said item was for equipment of cars Nos. 75, 65 and 75, indorsed with certificate of superintendent that $281 of this amount is for equipment. I find no check for this item.

Leedom & Shaw, $159.75 for carpets. This item appears in the cash book under date of August 31st, 1867, folio 70.

1698 I produce the original voucher, being receipt of Leedom & Shaw for $230.98, dated August 31st, 1867, for various items, including the item of $159.75, with a memorandum thereon that said item was for equipment of cars Nos. 75 and 76, indorsed with certificate of superintendent that $159.75 of this item was for equipment. I find no check for this item.

I also produce the original treasurer's abstract of payments for the month of August, 1867, filed among the company's papers at

that date, and including the various items for the month which I have hereinbefore given.

The next item on the ledger, folio 6, is a charge $1,634.49, which includes the following items:—

Southern Transportation Company, $300 for use of cars Nos. 11 and 12 for July.

I produce the original voucher, being receipt of W. S. Cottringer for $300, dated August 10th, 1867, for this specific item.

I produce the original check of the company to the order of W. S. Cottringer for $300, dated July 31st, 1867, indorsed by the payee and with the bank's stamp of payment.

McFarland & Collins. $514.46, carpets. This item appears in the cash book under date of August 10th, 1867, folio 68.

I produce the original voucher, being receipt of McFarland & Collins for this specific item. I find no check for this item.

Charles Dahlinger, $100, berth fronts. This item appears in the cash book under date of August 10th, 1867, folio 68.

I produce the original voucher, being receipt of Charles Dahlinger for $100, dated July 26th, 1867, for this specific item. I find no check for this item.

Jonah Woodruff, $60 for spittoons, &c. This item appears in the cash book under date of August 10th, 1867, folio 68.

I produce the original voucher, being receipt of Jonah Woodruff for $138.20, dated August 10th, 1867, for various items, including the item of $60, indorsed with the certificate that $60 of this item is for equipment. I find no check for this item.

1699 Jennie Norman, $33.25, sewing. This item appears in the cash book under date of July 31st, 1867, folio 68.

I produce the original voucher, being receipt of Jennie Norman for $39.25, dated July 31st, 1867, for various items, including $33.25, with a memorandum thereon that said item was for equipment of cars Nos. 69, 75 and 76, indorsed by the superintendent that $33.25 of this amount is for equipment. I find no check for this item.

Samuel Haddon, $7 for making carpet. This item appears in the cash book under date of July 31st, 1867, folio 68.

I produce the original voucher, being receipt of Samuel Haddon for $8.50 for various items, including the item of $7, with a memorandum that said item was for equipment of car No. 76, indorsed by the superintendent that $7 of this amount was for equipment. I find no check for this item.

Mulliken & Feather, $46 50 for plumbing. This item appears in the cash book under date of July 31st, 1867, folio 68.

I produce the original voucher, being receipt of Mulliken & Feather for $46.50, dated August 6th, 1867, for this specific item, stated therein to be for equipment of car No. 76, indorsed by the superintendent that it is for equipment. I find no check for this item.

W. H. Carryl, $2.25, yellow lining. This item appears in the cash book under date of July 31st, 1867, folio 68.

I produce the original voucher, being receipt of J. E. Walraven for $2.25, dated July 1?th, 1867, for this specific item, indorsed by

the superintendent that it is for equipment of car No. 76. I find no check for this item.

S. M. Atwell, $116.28, sewing. This item appears in the cash book under date of July 31st, 1867, folio 68.

I produce the original voucher, being receipt of S. M. Atwell for $116.28, dated July 31st, 1867, for this specific item, stated therein to be for equipment of cars Nos. 69, 76 and 75, indorsed by the superintendent that it is for equipment. I find no check for this item.

Thomas Thompson's Sons & Co., $82.50 for carpet. This item appears in the cash book under date of July 23d, 1867, folio 68.

1700 I produce original voucher, being receipt of Thomas Thompson's Sons & Co. for $82.50 for this specific item, stated therein to be for equipment of cars Nos. 75 and 76, indorsed by the superintendent that it is for equipment. I find no check for this item.

C. Schrack & Co., $2.25, white bronze. This item appears in the cash book under date of July 23d, 1867, folio 68.

I produce the original voucher, being receipt of C. Schrack & Co. for $2.25, dated July 15th, 1867, for this specific item, indorsed by the superintendent that it is for equipment of car No. 76. I find no check for this item.

Lewis Thompson & Co., $32, two washstand tops. This item appears in the cash book under date of July 23d, 1867, folio 68.

I produce the original voucher, being receipt of Lewis Thompson & Co. for $32, dated July 23d, 1867, for this specific item, stated thereon to be for equipment of car No. 76, indorsed by the superintendent that it is for equipment. I find no check for this item.

Field & Hardy, $11.37, hardware. This item appears in the cash book under date of July 23d, 1867, folio 68.

I produce the original voucher, being receipt of Field & Hardy for $11.37, dated July 23d, 1867, for this specific item, stated therein to be for equipment of cars Nos. 75 and 76, indorsed by the superintendent that it is for equipment. I find no check for this item.

W. H. Carryl, $104, silver-plated rods. This item appears in the cash book under date of July 23d, 1867, folio 68.

I produce the original voucher, being receipt of W. H. Carryl, dated July 21st, 1867, for this specific item, stated thereon to be for equipment of cars Nos. 69, 75 and 76, indorsed by the superintendent that it is for equipment. I find no check for this item.

C. Brintzinghoffer, $21.33, brushes. This item appears in the cash book under date of July 23d, 1867, folio 68.

I produce the original voucher, being receipt of C. Brintzinghoffer for $21.33, dated July 23d, 1867, for this specific item,

1701 stated thereon to be for equipment of cars Nos. 75 and 76, indorsed by the superintendent that it is for equipment. I find no check for this item.

Cauffman & Chew, $19 for spittoons. This item appears in the cash book under date of July 23d, 1867, folio 68.

I produce the original voucher, being receipt of Cauffman & Chew for $19, dated July 18th, 1867, for this specific item, stated

thereon to be for equipment of cars Nos. 75 and 76, indorsed by the superintendent that it is for equipment. I find no check for this item.

Doughten, Renshaw & Wilkins, $182.30 for prints and sheeting. This item appears in the cash book under date of July 11th, 1867, folio 68.

I produce the original voucher, being receipt of Doughten, Renshaw & Wilkins for $330.78, dated July 11th, 1867, for various items, including the item of $182.30, with a memorandum thereon that said item is for equipment of cars 69, 75 and 76, indorsed by the superintendent that it is for equipment.

I produce the original check of the company to the order of Doughten, Renshaw & Wilkins for $330.78, dated July 11th, 1867, indorsed by the payee and with the bank's stamp of payment.

I produce the original treasurer's abstract of payments for the month of July, 1867, filed among the company's papers at that date, and including the various items for the month which I have hereinbefore given.

The next item on the ledger, folio 6, is a charge of $9,036.31, which includes the following items:

Dykeman & Co., $1,568.78 on account of new cars Nos. 73 and 74. This item appears in the cash book under date of July 17th, 1867, folio 67. I find no voucher or check for this item.

Southern Transportation Company, $300 for use of cars Nos. 11 and 12 during the month of June, 1867. This item appears in the cash book under date of July 17th, 1867, folio 67.

I produce the original voucher, being receipt of W. S. Cottringer for $300, dated July 17th, 1867, for this specific item.

1702 I produce the original check of the company to the order of W. S. Cottringer for $300, dated July 17th, 1867, for this specific item, indorsed by the payee and with the bank's stamp of payment.

Jonah Woodruff, $271.30, carving basins, &c. This item appears in the cash book under date of July 8th, 1867, folio 66.

I produce the original voucher, being receipt of Jonah Woodruff for $271.30 for this specific item. I find no check for this item.

Mary A. Harvey, $36, sewing. This item appears in the cash book under date of July 8th, 1867, folio 66.

I produce the original voucher, being receipt of Mary A. Harvey for $38.10, dated July 1st, 1867, for various items, including the item of $36, with a memorandum thereon that said item was for equipment of cars Nos. 69, 75 and 76, indorsed with certificate of superintendent that $36 of this item is for equipment. I find no check for this item.

Thomas Thompson's Sons & Co., $134.84 for rep's. This item appears in the cash book under date of July 8th, 1867, folio 66.

I produce the original voucher, being receipt of Thomas Thompson's Sons & Co. for $134.84, dated July 8th, 1867, for this specific item, stated thereon to be for equipment of cars Nos. 69, 75 and 76, indorsed by the superintendent that it is for equipment. I find no check for this item.

Field & Hardy, $19.39, hardware. This item appears in the cash book under date of July 1st, 1867, folio 66.

I produce the original voucher, being receipt of Field & Hardy for $19.39, dated July 1st, 1867, for this specific item, stated therein to be for equipment of car No. 76, indorsed by the superintendent that it is for equipment. I find no check for this item.

Sarah Miller, $55, sewing. This item appears in the cash book under date of June 29th, 1867, folio 66.

I produce the original voucher, being receipt of Sarah Miller for $96, dated June 30th, 1867, for various items, including the
1703 item of $55, with a memorandum thereon that said item was for equipment of car No. 76, indorsed by the superintendent that it was for equipment. I find no check for this item.

Benjamin Shoemaker, $27.98 for glass. This item appears in the cash book under date of June 29th, 1867, folio 66.

I produce the original voucher, being receipt of B. H. Shoemaker for $55.74, dated June 29th, 1867, for various items, including the item of $27.98, with a memorandum thereon that said item was for equipment of cars Nos. 69 and 76, indorsed by superintendent that it is for equipment. I find no check for this item.

H. Wacher, $66.50 for oil. This item appears in the cash book under date of June 22d, 1867, folio 66.

I produce the original voucher, being receipt of H. Wacher for $66.50, dated June 22d, 1867, for this specific item. I find no check for this item.

C. Schrack & Co., $17.03 for colors. This item appears in the cash book under date of June 22d, 1867, folio 66.

I produce the original voucher, being receipt of C. Schrack & Co. for $17.03 for this specific item, stated therein to be for equipment of car No. 76, and indorsed by superintendent that this amount is for equipment. I find no check for this item.

Pearce & McCartney, $84 for hair. This item appears in the cash book under date of June 22d, 1867, folio 66.

I produce original voucher, being receipt of Pearce & McCartney for $84, dated June 20th, 1867, for this specific item, stated thereon to be for equipment of car No. 75, indorsed by the superintendent that it is for equipment of car No. 75. I find no check for this item.

Charles Bremer, $150, frescoing. This item appears in the cash book under date of June 22d, 1867, folio 66.

I produce the original voucher, being receipt of C. Bremer for $150, dated June 24th, 1867, for this specific item, stated thereon to be for car No. 76, indorsed by the superintendent that it is for equipment. I find no check for this item.

Thomas Thompson's Sons & Co., $705.83, seats. This item appears in the cash book under date of June 13th, 1867, folio 66.

1704 I produce the original voucher, being receipt of Thomas Thompson's Sons & Co. for $705.83, dated June 18th, 1867, for this specific item, stated thereon to be for equipment of cars Nos. 69, 75 and 76, indorsed by the superintendent that it is for equipment. I find no check for this item but produce the original stub, check No.

2072, to the order of R. Hays, showing this specific amount included.

B. H. Shoemaker, $1,090.37 for glass. This item appears in the cash book under date of June 18th, 1867, folio 66.

I produce the original voucher, being receipt of B. H. Shoemaker for $1,090.37, dated June 18th, 1867, for this specific item, stated therein to be for equipment of cars Nos. 69, 75 and 76, indorsed by the superintendent that it is for equipment. I do not find check for this item, but produce stub of check No. 2072, dated June 18th, 1867, showing the specific amount included.

R. Ligget & Co., $5.80 for iron bars. This item appears in the cash book under date of June 18th, 1867, folio 66.

I produce the original voucher, being receipt of R. Ligget & Co. for $5.80, dated June 12th, 1867, for this specific item, stated therein to be for equipment of car No. 76. I find no check for this item.

Doughten, Renshaw & Wilkins, $503.49, prints. This item appears in the cash book under date of June 18th, 1867, folio 66.

I produce the original voucher, being receipt of Doughten, Renshaw & Wilkins for $661.29, dated June 18th, 1867, for various items, including the item of $503.49, with a memorandum thereon that said item was for equipment of cars Nos. 69, 75 and 76, indorsed by the superintendent that it is for equipment. I find no check, but produce stub of check No. 2072, dated June 18th, 1867, to the order of R. Hays for $3,357.70, showing this specific amount included.

Dykeman & Co., $4,000 for balance on cars Nos. 71 and 72 and 73 and 74. This item appears in the cash book under date of June 18th, 1867, folio 66.

I produce original vouchers, being receipts of Dykeman & Co. for $48,000, and showing $4,000 to be the balance received this date.

1705 I produce the original check of the company to the order of Dykeman & Co. for $4,000, dated June 15th, 1867, indorsed by the payee and with the bank's stamp of payment.

I produce the original treasurer's abstract of payments for the month of June, 1867, filed among the company's papers at that date, and including various items for the month which I have hereinbefore given.

The next item on the ledger, folio 6, is a charge of $5,093.82, which includes the following items:

Southern Transportation Company, $300, for use of cars Nos. 11 and 12 during the month of May, 1867. This item appears in the cash book under date of June 14th, 1867, folio 65.

I produce the original voucher, being receipt of W. S. Cottringer, treasurer, for $300, dated June 14th, 1867, for this specific item. I find no check for this item, but produce stub of check No. 68, dated June 14th, 1867, to the order of W. S. Cottringer for use of cars Nos. 11 and 12, $300.

James Spear for $86.75 for stoves and registers car No. 76. This item appears in the cash book under date of June 8th, 1867, folio 65.

I produce original voucher, being receipt of James Spear for $285.55, dated June 8th, 1867, for various items, including the item

of $86.75, indorsed with the certificate of the superintendent that $86.75 of this item is for equipment. I find no check for this item.

Charles Dahlinger, $100 for extension beds. This item appears in the cash book under date of June 7th, folio 64.

I produce original voucher, being receipt of Charles Dahlinger for $100, dated May 25th, 1867, for this specific item. I find no check for this item.

Linda M. Shindle, $44 for quilts. This item appears in the cash book under date of June 1st, 1867, folio 64.

I produce the original voucher, being receipt of Linda M. Shindle for $89, dated June 1st, 1867, for various items, including the item of $44, with a memorandum thereon that said item was for equipment of car No. 75, indorsed with certificate of superintendent that $44 of this amount was for equipment. I find no check for this item.

1706 Pennsylvania Railroad Company, $1,546.14, remodeling cars. This item appears in the cash book under date of May 20th, 1867, folio 64.

I produce the original voucher, being receipt of the Pennsylvania railroad for $1,994.64, dated May 20th, 1867, for various items, including the item of $1,546.14, indorsed with certificate of superintendent that $1,546.14 is for equipment.

I produce original check of the company to the order of E. H. Williams, general superintendent, for $1,994.64, dated May 18th, 1867, indorsed by the payee and with the bank's stamp of payment.

Abraham Turner, $90 for cotton laps. This item appears in the cash book under date of May 18th, 1867, folio 64.

I produce the original voucher, being receipt of Abraham Turner for $90, dated May 18th, 1867, for this specific item, stated thereon to be for equipment of cars No. 69 and 75, and indorsed by the superintendent that it is for equipment. I find no check for this item.

Thomas Thompson's Sons & Co., $1,127.80 for carpet, hair, &c. This item appears in the cash book under date of May 13th, 1867, folio 64.

I produce the original voucher, being receipt of Thomas Thompson's Sons & Co. for $1,127.80, dated May 13th, 1867, indorsed by the superintendent that it is for construction.

I produce the original check of the company to the order of R. Hays for $2,775.68, dated May 13th, 1867, indorsed by the payee and with the bank's stamp of payment.

Doughten, Renshaw & Wilkins, $114.30, dry goods. This item appears in the cash book under date of May 13th, 1867, folio 64.

I produce the original voucher, being receipt of Doughten, Renshaw & Wilkins for $427.38, dated May 13th, 1867, for various items, including the item of $114.30, indorsed with the certificate of superintendent that $114.30 of this item is for equipment.

I produce the original check of the company to the order of R. Hays for $2,775.68, dated May 13th, 1867, indorsed by the payee and with the bank's stamp of payment.

1707 W. H. Carryl, $64.40 for head lining. This item appears in the cash book under date of May 13th, 1867, folio 64.

I produce the original voucher, being receipt of W. H. Carryl for $64.40, dated May 6th, 1867, for this specific item.

I produce the original check of the company to the order of R. Hays for $2,775.68, dated May 13th, 1867, indorsed by the payee and with the bank's stamp of payment.

B. H. Shoemaker, $827.70 for glass. This item appears in the cash book under date of May 13th, 1867, folio 64.

I produce the original voucher, being the receipt of Benjamin H. Shoemaker for $827.70, dated May 13th, 1867, for this specific item.

I produce the original check of the company to the order of R. Hays for $2,775.68, dated May 13th, 1867, indorsed by the payee and with the bank's stamp of payment.

Dykeman & Co., $792.73 for materials, car No. 76. This item appears in the cash book under date of May 13th, 1867, folio 64.

I produce the original voucher, being receipt of Dykeman & Co. for $792.73, for this specific item.

I produce the original check of the company to the order of G. R. Dykeman for $725.64, dated May 22d, 1867; also produce stub of the check showing this to have been in settlement for the bill of $792.73 and other amounts, indorsed by payee and with the bank's stamp of payment.

I also produce original treasurer's abstract of payments for the month of May, 1867, filed among the company's papers at that date, and including the various items for the month which I have hereinbefore given.

The next item on the ledger, folio 6, is a charge of $2,180.24, which includes the following items:—

Southern Transportation Company, $300 for use of cars Nos. 9 and 10 for the month of April, 1867. This item appears in the cash book under date of April 30th, 1867, folio 63. I find no voucher for this amount and no check.

Jonah Woodruff, $233.60, bills for supplies. This item appears in the cash book under date of May 9th, 1867, folio 62.

1708 I produce original voucher, being receipt of Jonah Woodruff for $233.60, for this specific sum.

I produce the original check of the company to the order of Jonah Woodruff for $5,354, dated May 6th, 1867, indorsed by the payee and with the bank's stamp of payment, and stub showing this specific amount included.

Linda M. Shindle, $112.20, sewing. This item appears in the cash book under date of May 6th, 1867, folio 62.

I produce the original voucher, being receipt of Linda M. Shindle for $112.20, dated May 6th, 1867, for this specific item, indorsed by the superintendent that it is for equipment. I find no check for this item.

James Spear, $324.43 for stoves, cars Nos. 67 and 75. This item appears in the cash book under date of May 6th, 1867, folio 62.

I produce the original voucher, being receipt of James Spear for $324.43, dated May 6th, 1867, for this specific item, indorsed by the superintendent that it is for equipment. I find no check for this item.

Wilhelm & Neuman, $190.18 for hardware. This item appears in the cash book under date of May 6th, 1867, folio 62.

I produce original voucher, being receipt of Wilhelm & Neuman for $310.28, dated May 6th, 1867, for various items, including the item of $190.18, with a memorandum thereon that said item was for equipment, indorsed by certificate of superintendent that it is for equipment. I find no check for this item.

Charles Lafferty, $20 for hauling. This item appears in the cash book under date of April 12th, 1867, folio 62.

I produce the original voucher of the company, being receipt of Charles Lafferty for $20, dated April 1st, 1867, for this specific item, indorsed by the superintendent that it is for equipment.

I produce original check of the company to the order of R. Hays for $1,221.63, dated April 12th, 1867, indorsed by the payee and with the bank's stamp of payment, and stub with this specific amount included.

1709 Leedom & Shaw, $141.99 for carpets. This item appears in the cash book under date of April 12th, 1867, folio 62.

I produce the original voucher, being receipt of Leedom & Shaw for $141.99, dated March 12th, 1867, for this specific item, stated thereon to be for equipment of cars Nos. 73 and 74, indorsed by the superintendent that it is for equipment.

I produce the original check of the company to the order of R. Hays for $1,221.63, dated April 12th, 1867, indorsed by the payee and with the bank's stamp of payment, and stub showing this specific amount included.

Doughten, Renshaw & Wilkens, $411.81 for sheeting. This item appears in the cash book under date of April 11th, 1867, folio 62.

I produce the original voucher, being receipt of Doughten, Renshaw & Wilkens for $411.81, dated April 12th, 1867, for this specific item, indorsed by the superintendent that it is for equipment.

I produce the original check of the company to the order of R. Hays for 1,221.63, dated April 12th, 1867, indorsed by the payee and with the bank's stamp of payment, and stub showing this specific amount included.

Wilhelm & Neuman, $447.03, car materials. This item appears in the cash book under date of April 12th, 1867, folio 62.

I produce original voucher, being receipt of Wilhelm & Neuman for $447.03, dated April 12th, 1867, for this specific item, indorsed by the superintendent that it is for equipment.

I produce the original check of the company to the order of R. Hays for $1,221.63, dated April 12th, 1867, indorsed by payee and with bank's stamp of payment, and stub showing this specific amount included.

I also produce the original treasurer's abstract of payments for the month of April, 1867, filed among the company's — at that date, including the various payments for the month of April which I have hereinbefore given.

1710 The next item on the ledger, folio 6, is a charge of $1,102.33, which includes the following items:—

Wilhelm & Neuman, $243.22, car materials. This item appears in the cash book under date of April 6th, 1867, folio 60.

I produce original voucher, being receipt of Wilhelm & Neuman for $243.22 for this specific item, stated therein to be for equipment of cars Nos. 73 and 74. indorsed by the superintendent that it is for equipment. I find no check for this item.

Lewis Thompson, $30 for washstand tops, car No. 76. This item appears in the cash book under date of April 4th, 1867, folio 60.

I produce original voucher, being receipt of Lewis Thompson & Co. for $30, dated April 4th, 1867, for this specific item, stated therein to be for equipment of "silver palace" No. 76, indorsed by the superintendent that it is for equipment. I find no check for this item.

S. M. Atwell, $18 for sewing. This item appears in the cash book under date of April 1st, 1867, folio 60.

I produce original voucher, being receipt of S. M. Atwell for $18, dated April 1st, 1867, for this specific item.

I produce the original check of the company to the order of R. Hays for $442.84, indorsed by the payee and with the bank's stamp of payment, and stub showing this specific amount included.

Mary A. Harvey, $14.40 for sewing. This item appears in the cash book under date of April 1st, 1867, folio 60.

I produce the original voucher, being receipt of Mary A. Harvey for $14.40 for this specific item, dated April 1st, 1867, stated thereon to be for cars Nos. 73 and 74.

I produce the original check of the company to the order of R. Hays for $442.84, dated March 12th, 1867, indorsed by the payee and with the bank's stamp of payment, and stub showing this specific amount included.

Pennsylvania Railroad Company, $169.12, labor and materials. This item appears in the cash book under date of March 28th, 1867, folio 60.

1711 I produce the original voucher, being receipt of the Pennsylvania Railroad Company for $2,615.96, dated March 28th, 1867, for various items, including the item of $169.12, indorsed that $169.12 of this amount is for equipment.

I produce the original check of the company to the order of E. H. Williams, general superintendent, for $2,615.96, dated March 27th, 1867, indorsed by the payee and with the bank's stamp of payment.

Linda M. Shindle, $110, sewing. This item appears in the cash book under date of March 28th, 1867, folio 60.

I produce the original voucher, being receipt of Linda M. Shindle for $110, dated March 28th, 1867, for this specific item, indorsed by the superintendent that it is for equipment. I find no check for this item.

James Spear, $20.50 for spittoons. This item appears in the cash book under date of March 27th, 1867, folio 60.

I produce the original voucher, being receipt of James Spear for $20.50, dated March 27th, 1867, for this specific item, stated therein

to be for cars Nos. 73 and 74, indorsed by the superintendent that it is for equipment. I find no check for this item.

C. Brintzinghoffer, $11.90, brushes. This item appears in the cash book under date of March 25th, 1867, folio 60.

I produce the original voucher, being receipt of C. Brintzinghoffer for $11.90, dated March 25th, 1867, for this specific item, stated therein to be for cars Nos. 73 and 74, indorsed by the superintendent that it is for equipment. I find no check for this item.

Abraham Turner, $90 for cotton laps. This item appears in the cash book under date of March 23d, 1867, folio 60.

Also Abraham Turner, $108.60 for cotton laps. This item appears in the cash book under date of March 23d, 1867, folio 60.

I produce original vouchers, being receipts of Abraham Turner for $90 and $108.60, respectively, dated March 23d, 1867, for these specific items, indorsed by the superintendent that they are for equipment. I find no check for these items.

1712 Doughten, Renshaw & Wilkins, $276.59, prints. This item appears in the cash book under date of March 12th, 1867, folio 60.

I produce the original voucher, being receipt of Doughten, Renshaw & Wilkins for $276.59, dated March 12th, 1867, for this specific item, stated thereon to be for cars Nos. 73 and 74, indorsed by superintendent that it is for equipment.

I produce the original check of the company to the order of R. Hays for $442.84, dated March 12th, 1867, indorsed by the payee and with the bank's stamp of payment, and stub showing this specific amount included.

Charles Lafferty, $10, hauling cars. This item appears in the cash book under date of March 1st, 1867, folio 60.

I produce the original voucher, being receipt of Charles Lafferty for $10, dated March 1st, 1867, for this specific item, stated therein to be for cars Nos. 71 and 72.

I produce the original check of the company to the order of R. Hays for $442.84, dated March 12th, 1867, indorsed by the payee and with the bank's stamp of payment, and stub showing this specific amount included.

Southern Transportation Company, $300 for use of cars Nos. 9 and 10 in March, 1867. This item appears in the cash book under date of March 31st, 1867, folio 60. I find no voucher or check for this item.

I produce original treasurer's abstract of payments for the month of March, 1867, filed among the company's papers at that date, and including the various items for the month which I have hereinbefore given.

The next item on the ledger, folio 6, is a charge of $4,548.18, which includes the following items:—

C. Brintzinghoffer, $20.76, brushes. This item appears in the cash book under date of February 28th, 1867, folio 58.

I produce the original voucher, being receipt of C. Brintzinghoffer for $20.76, dated February 28th, 1867, for this specific item, stated

therein to be for equipment of cars Nos. 71 and 72. I find no check for this item.

Linda M. Shindle, $110 for sewing. This item appears in the cash book under date of February 28th, 1867, folio 58.

1713 I produce original voucher, being receipt of Linda M. Shindle for $110, dated February 28th, 1867, for this specific item, stated therein to be for cars Nos. 73 and 74. I find no check for this item.

Wilhelm & Neuman, $138.30 for hardware and lamps. This item appears in the cash book under date of February 28th, 1867, folio 58.

I produce original voucher, being receipt of Wilhelm & Neuman for $138.30, dated March 6th, 1867, for this specific item, indorsed that it is for equipment. I find no check for this item.

Leedom & Shaw, $29 for mats. This item appears in the cash book under date of February 28th, 1867, folio 58.

I produce the original voucher, being receipt of Leedom & Shaw for $29, dated March 1st, 1867, for this specific item, indorsed that it is for equipment. I find no check for this item.

Wilhelm & Neuman, $72 for hardware. This item appears in the cash book under date of February 28th, 1867, folio 58.

I produce the original voucher, being receipt of Wilhelm & Neuman for $231.60, dated February 14th, 1867, for various items, including the item of $72, with a memorandum thereon that said item was for equipment of car No. 18, indorsed that $72 of this amount is for equipment. I find no check for this item.

Dykeman & Co., $246.17 for work on cars Nos. 18 and 32. This item appears in the cash book under date of February 28th, 1867, folio 58.

I produce the original voucher, being the receipt of Dykeman & Co. for $388.10 for various items, including the item of $246.17, indorsed that $246.17 of this item is for equipment. I find no check for this item, but produce the original stub of check No. 916 to the order of Dykeman & Co. for $388.10, dated February 11th, 1867.

Leedom & Shaw, $50.25, carpets. This item appears in the cash book under date of February 28th, 1867, folio 58.

I produce the original voucher, being receipt of Leedom & Shaw for $50.25, dated February 14th, 1867, for this specific item,
1714 stated therein to be for silver palace No 70, indorsed by the superintendent that it is for equipment. I find no check for this item.

Benjamin H. Shoemaker, $85 for glass. This item appears in the cash book under date of February 28th, 1867, folio 58.

I produce the original voucher, being receipt of B. H. Shoemaker for $85, dated February 14th, 1867, for this specific item, stated therein to be for silver palace No. 70, and indorsed by the superintendent that it is for equipment. I find no check for this item.

Wilhelm & Neuman, $165.90 for hardware. This item appears in the cash book under date of February 28th, 1867, folio 58.

I produce the original voucher, being receipt of Wilhelm & Neuman for $165.90, dated February 14th, 1867, for this specific item,

stated therein to be silver palace No. 70, and indorsed that it is for equipment. I find no check for this item.

Charles Lafferty, $5, hauling. This item appears in the cash book under date of February 28th, 1867, folio 58.

I produce the original voucher, being receipt of Charles Lafferty for $5, dated December 31st, 1866, for this specific item, indorsed that it is for equipment. I find no check for this item.

W. H. Horstman & Sons, $2.25 for lines. This item appears in the cash book under date of February 28th, 1867, folio 58.

I produce the original voucher, being receipt of W. H. Horstman & Sons, for $2.25, dated January 25th, 1867, for this specific item, stated therein that it is for equipment of car No. 70, indorsed that it is for equipment. I find no check for this item.

C. Brintzinghoffer, $8.95 for brushes. This item appears in the cash book under date of February 28th, 1867, folio 58.

I produce the original voucher, being receipt of C. Brintzinghoffer for $8.95, dated January 26th, 1867, for this specific item, stated therein to be for car No. 70, and indorsed that it is for equipment. I find no check for this item.

1715 Mary A. Harvey, $15.60, rugs. This item appears in the cash book under date of February 28th, 1867, folio 58.

I produce original voucher, being receipt of Mary A. Harvey for $15.60, dated January 31st, 1867, for this specific item, and stated thereon to be for equipment of cars Nos. 71 and 72, indorsed by the superintendent that it is for equipment. I find no check for this item.

Linda M. Shindle, $55 for sewing. This item appears in the cash book under date of February 28th, 1867, folio 58.

I produce the original voucher, being receipt of Linda M. Shindle for $55, dated January 31st, 1867, for this specific item, stated thereon to be for cars Nos. 71 and 72, indorsed by the superintendent that it is for equipment. I find no check for this item.

Dykeman & Co., $3,500 on account of cars Nos. 71 and 72. This item appears in the cash book under date of February 28th, 1867, folio 58.

I produce the original voucher, being receipt of Dykeman & Co. for $3,500, dated February 21st, 1867, for this specific item.

I produce the original check of the company to the order of Dykeman & Co. for $319.66, dated February 21st, 1867, indorsed by payee and with the bank's stamp of payment, and stub showing this amount to have been in settlement of account.

Jonah Woodruff, $44, urns and ornaments. This item appears in the cash book under date of February 28th, 1867, folio 58.

I produce the original voucher, being receipt of Jonah Woodruff for $44, dated March 7th, 1867, for this specific item.

I also produce original check of the company to the order of Jonah Woodruff for $4,059.80, dated March 7th, 1867, indorsed by the payee and with the bank's stamp of payment, and stub showing this specific amount included.

The next item on the ledger, folio 6, is a charge of $300, which

is for Southern Transportation Company for the use of cars
1716 Nos. 9 and 10 during the month of February, 1867. This item appears in the cash book under date of February 28th, 1867, folio 58.

I produce the original voucher, being receipt of W. S. Cottringer, treasurer, for $300, dated March 19th, 1867, for this specific item. I find no check for this item.

I produce the original treasurer's abstract of payments for the month of February, 1867, filed among the company's papers at that date, and including the various items for the month which I have hereinbefore given.

The next item on the ledger, folio 6, is a charge of $300, which is for Southern Transportation use of cars Nos. 9 and 10 during the month of January. This item appears in the cash book under date of January 1st, 1867, folio 56. I find no voucher or receipt or check for this item.

The next item on the ledger, folio 6, is a charge of $7,592.24, which includes the following items:

Philadelphia, Wilmington and Baltimore Railroad Company, $845.29, materials and labor. This item appears on the cash book under date of January 21st, 1867, folio 56.

I produce the original voucher, being receipt of the Philadelphia, Wilmington and Baltimore Railroad Company for $845.29, dated January 18th, 1867, for this specific item, indorsed on the back that it is for equipment.

I produce the original check of the company to the order of H. F. Kenney, general superintendent, for $1,238.92, dated January 18th, 1867, indorsed by the payee and with the bank's stamp of payment, and stub showing this specific amount included.

Jonah Woodruff, $299.62, hardware and carpet bills. This item appears in the cash book under date of January 31st, 1867, folio 56.

I produce the original voucher, being receipt of Jonah Woodruff for $299.62, dated February, 1867, for this specific item, indorsed that it is for equipment. I find no check for this item.

Dykeman & Co., $5,000 on account of cars Nos. 71 and 72. This item appears in the cash book under date of January 31st, 1867, folio 56.

1717 I produce the original voucher, being receipt of Dykeman & Co. for $5,000, dated February 7th, 1867, for this specific item, indorsed that it is for equipment.

I produce original check of the company to the order of Dykeman & Co. for $5,000, dated February 7th, 1867, indorsed by the payee and with the bank's stamp of payment.

Doughten, Renshaw & Wilkins, $709, sheetings and prints. This item appears in the cash book under date of January 16th, 1867, folio 56.

I produce the original voucher, being receipt of Doughten, Renshaw & Wilkins for $709, dated January 16th, 1867, for this specific item, indorsed by the superintendent that it is for equipment. I find no check for this item.

Dykeman & Co., $102.88 on account of car No. 69. This item appears in the cash book under date of January 15th, 1867, folio 56.

I produce the original voucher, being receipt of Dykeman & Co. for $263.60, dated January 15th, 1867, for various items, including the item of $102.88, indorsed that $102.88 of this item is for equipment. I find no check for this item, but produce stub of check No. 908 to the order of Dykeman & Co. for $263.60, dated January 16th, 1867.

Southern Transportation Company, $300 for the use of two cars during the month of December. This item appears in the cash book under date of January 14th, 1867, folio 56.

I produce original voucher, being receipt of W. S. Cottringer for $300, dated January 14th, 1867, for this specific item, indorsed that it is for equipment. I find no check for this item, but produce stub No. 907 to the order of the Southern Transportation Company for $300, dated January 14th, 1867, for this specific item.

Mary A. Harvey, $24, sewing. This item appears in the cash book under date of January 2d, 1867, folio 56.

I produce the original voucher, being receipt of Mary A. Harvey for $24, dated January 2d, 1867, for this specific item, stated therein to be for silver palace No. 70, and indorsed that it is for equipment. I find no check for this item.

1718 Leedom & Shaw, $218.25 for carpets. This item appears in the cash book under date of December 31st, 1866, folio 56.

I produce the original voucher, being receipt of Leedom & Shaw for $218.25, dated December 31st, 1866, for this specific item, stated therein to be for cars Nos. 71 and 72, indorsed by the superintendent that it is for equipment. I find no check for this item.

S. M. Attwell, $27.20 for sewing sheets. This item appears in the cash book under date of December 31st, 1866, folio 56.

I produce the original voucher, being receipt of S. M. Atwell for $27.20, dated December 31st, 1866, for this specific item, indorsed by the superintendent that it is for equipment. I find no check for this item.

Linda M. Shindle, $66 for sewing. This item appears in the cash book under date of December 30th, 1866, folio 56.

I produce the original voucher, being receipt of Linda M. Shindle for $66, dated December 30th, 1866, for this specific item, indorsed by the superintendent that it is for equipment. I find no check for this item, but produce stub of check No. 910 to the order of R. Hays for $1,520.19, dated January 16th, 1867.

I produce the original treasurer's abstracts of payments for the month of January, 1867, filed among the company's papers at that date, and including the various items which I have hereinbefore given.

The next item on the ledger, folio 6, is a charge of $12,332.87, which includes the following items:—

Southern Transportation Company, $600 for the use of cars Nos. 13, 14, 15, and 16 during the month of November. This item appears in the cash book under date of December 31st, 1866, folio 54.

I produce the original voucher, being receipt of W. S. Cottringer

for $600, dated December 31st, 1866, for this specific item, indorsed to be for equipment. I find no check, but produce stub of check No. 35 to the order of Southern Transportation Company for $600, dated December 15th, 1866, for this specific item.

1719 Pittsburgh, Fort Wayne and Chicago Railway Company, $756.10, labor and materials. This item appears in the cash book under date of January 8th, 1867, folio 54.

I produce the original voucher, being receipt of Pittsburgh, Fort Wayne and Chicago Railway Company for $756.10, dated December 27th, 1866, for this specific item. I find no check for this item, but produce stub of check No. 218 to the order of Jonah Woodruff for $6,177.15, with this specific amount included.

Dykeman & Co., $10,000 on account of cars Nos. 71 and 72. This item appears in the cash book under date of December 29th, 1866, folio 54.

I produce the original voucher, being receipt of Dykeman & Co. for $10,000, dated December 29th, 1866, indorsed to be for equipment. I find no check for this item, but produce stub of check No. 40 to the order of Dykeman & Co. for $10,000 on account of new cars Nos. 71 and 72, dated December 29th, 1866.

Doughten, Renshaw & Wilkins, $729.64, sheeting. This item appears in the cash book under date of December 14th, 1866, folio 54.

I produce the original voucher, being receipt of Doughten, Renshaw & Wilkins for $729.64, dated December 14th, 1866, for this specific item, indorsed that it is for equipment. I find no check for this item.

James Spear, $42 for spittoons. This item appears in the cash book under date of December 14th, 1866, folio 54.

I produce the original voucher, being receipt of James Spear for $42, dated December 14th, 1866, indorsed by the superintendent that it is for equipment of cars Nos. 72, 73, and 74. I find no check for this item.

William Groves & Co., $119.71, feathers. This item appears in the cash book under date of December 14th, 1866, folio 54.

I produce the original voucher, being receipt of William Groves & Co. for $119.71, dated December 14th, 1866, for this specific item, indorsed to be for equipment. I find no check for this item.

1720 S. M. Attwell, $75.28 for sewing. This item appears in the cash book under date of December 1st, 1866, folio 54.

I produce the original voucher, being receipt of S. M. Atwell for $75.28, dated December 1st, 1866, for this specific item, indorsed to be for equipment. I find no check for this item.

Mary A. Harvey, $10.14 for sewing. This item appears in cash book under date of December 1st, 1866, folio 54.

I produce original voucher, being receipt of Mary A. Harvey for $10.14, dated December 1st, 1866, indorsed to be for equipment. I find no check for this item.

I also produce the original abstract of payments for the month of December, 1866, filed among the company's papers at that date, and

including the various items for the month which I have hereinbefore given.

The next item on the ledger, folio 6, is a charge of $1,520.62. This item appears in the cash book under date of December 30th, 1866, folio 52, paid through D. Fleming the installment of bonus on capital to the State to date, $1,520.62. I find no check for this item, but produce stub of check No. 489 to the order of D. Fleming for $1,520.62, dated November 15th, 1866.

The next item on the ledger, folio 6, is a charge of $3,490.43, which includes the following items:

Abraham Turner, $242.40 for cotton laps. This item appears in the cash book under date of December 8th, 1866, folio 52.

I produce original voucher, being receipt of Abraham Turner for $242.40, dated December 8th, 1866, for this specific item, stated thereon to be for cars Nos. 71 and 72. I find no check for this item, but produce stub of check No. 695 to the order of Abraham Turner for $242.40, dated December 8th, 1866.

Jonah Woodruff, $100, head lining. This item appears in the cash book under date of December 8th, 1866, folio 52.

I produce the original voucher, being receipt of Jonah Woodruff for $100, dated December 8th, 1866, for this specific item, indorsed that it is for equipment. I find no check for this item.

1721 Bolton, Dykeman & Co., $93.31, materials. This item appears in the cash book under date of November 19th, 1866, folio 52.

I produce original voucher, being receipt of Bolton, Dykeman & Co. for $363.98, dated November 19th, 1866, for various items, including the item of $93.31, with a memorandum thereon that said item was for equipment. I find no check for this item, but produce stub of check No. 491 to the order of Bolton Dykeman & Co. for $363.98, dated November 19th, 1866.

Wilhelm & Neuman, $1,266.79, hardware. This item appears in the cash book under date of November 13th, 1866, folio 52.

I produce original voucher, being receipt of Wilhelm & Neuman for $1,266.79, dated November 13th, 1866, for this specific item, indorsed thereon that it is for car No. 70. I find no check for this item.

Doughten, Renshaw & Wilkins, $374.35, prints. This item appears in the cash book under date of November 13th, 1866, folio 52.

I produce original voucher, being receipt of Doughten, Renshaw & Wilkins for $374.35, dated November 13th, 1866, for this specific item, stated therein to be for cars Nos. 71 and 72, and indorsed to be for equipment. I find no check for this item.

Doughten, Renshaw & Wilkins, $67.25 for bleached sheeting. This item appears in the cash book under date of November 13th, 1866, folio 52.

I produce original voucher, being receipt of Doughten, Renshaw & Wilkins for $116.84, dated November 13th, 1866, for various items, including the item of $67.25, with a memorandum thereon that said item was for car No. 70, and indorsed that $67.25 was for equipment. I find no check for this item, but produce stub of check

No. 484 to the order of R. Hays for $3,432.12, dated November 12th, 1866, of which this item forms a part.

Leedom & Shaw, $166.25, carpeting. This item appears in the cash book under date of November 13th, 1866, folio 52

1722 I produce the original voucher, being receipt of Leedom & Shaw for $420.87, dated November 13th, 1866, for various items, including the item of $166.25, with a memorandum thereon that said item was for car No. 7, and indorsed that $166.25 of this item was for equipment. I find no check for this item, but produce stub of check No. 484 to the order of R. Hays for $3,432.12, dated November 13th, 1866, of which this item forms a part.

W. H. Carryl, $468.03, for upholstery. This item appears in the cash book under date of November 13th, 1866, folio 52.

I produce original voucher, being receipt of W. H. Carryl for $468.03, dated November 13th, 1866, for this specific item, stated thereon to be for car No. 70, indorsed to be for equipment. I find no check for this item, but produce stub of check No. 484 to the order of R. Hays for $3,432.12, dated November 13th, 1866, of which this item forms a part.

James Spear, $96.50, stoves. This item appears in the cash book under date of November 13th, 1866, folio 52.

I produce the original voucher, being receipt of James Spear & Co. for $134.50, dated November 13th, 1866, for various items, including the item of $96.50, with a memorandum thereon that said item was for silver palace No. 70, indorsed that it is for equipment. I find no check for this item, but produce stub of check No. 484 to the order of R. Hays for $3,432.12, dated November 13th, 1866, of which this item forms a part.

William Groves & Co., $116.34 for pillows. This item appears in the cash book under date of November 7th, 1866, folio 52.

I produce the original voucher, being receipt of William Groves & Co. for $116.34, dated November 7th, 1866, for this specific item, stated thereon to be for silver palace No. 70 and indorsed to be for equipment. I find no check for this item, but produce stub of check No. 484 to the order of R. Hays for $3,432.12, dated November 13th, 1866, of which this item forms a part.

S. M. Attwell, $24.56, sewing. This item appears in the cash book under date of November 1st, 1866, folio 52.

1723 I produce the original voucher, being receipt of S. M. Attwell for $63, dated November 1st, 1866, for various items, including the item of $24.56, indorsed that $24.56 of this item is for equipment. I find no check for this item.

Mary A. Harvey, $48.25 for sewing. This item appears in the cash book under date of November 1st, 1866, folio 52.

I produce the original voucher, being receipt of Mary A. Harvey for $48.25, dated November 1st, 1866, for this specific item, stated thereon to be for silver palace No. 70. I find no check for this item, but produce stub of check No. 484 to the order of R. Hays for $3,432.12, dated November 13th, 1866, of which this item forms a part.

Jennie Norman, $26.40 for sewing. This item appears in the cash book under date of November 1st, 1866, folio 52.

I produce the original voucher, being receipt of Jennie Norman for $26.40, dated November 1st, 1866. stated thereon to be for silver palace No. 70. I find no check for this item, but produce stub of check No. 484 to the order of R. Hays, for $3,432.12, dated November 13th, 1866, of which this item forms a part.

Southern Transportation Company, $400 for use of two sleeping cars, Nos. 13 and 14, September 21st to October 21st, 1866. This item appears in the cash book under date of November 1st, 1866, folio 52.

I produce the original voucher, being receipt of W. S. Cottringer for $400, dated October 31st, 1866, for this specific item. I find no check for this item, but produce stub of check No. 490 for use of cars Nos. 13 and 14, $400, dated November 17th, 1866, to the order of the Southern Transportation Company.

I produce original treasurer's abstract of payments for the month of November, 1866, filed among the company's papers at that date, and including the various items for the month which I have hereinbefore mentioned.

The next item on the ledger, folio 6, is a charge of $9,054.80, which includes the following items:

Jonah Woodruff, $698.25 for bills of furnishing. This item appears in the cash book under date of November 7th, 1866, folio 51.

1724 I produce the original voucher, being receipt of Jonah Woodruff for $1,081.72, dated November 7th, 1866, for various items, including the item of $698.25, indorsed that $698.25 of this amount is for equipment. I find no check, but produce stub of check No. 207 to the order of Jonah Woodruff for $5,382.91, dated November 7th, 1866, which includes this specific item.

Pennsylvania Railroad Company, $1,000. This item appears in the cash book under date of October 31st, 1866, folio 51. I find no voucher for this item, but produce stub of check No. 204 to the order of E. H. Williams, general superintendent, for $1,998.14, dated October 30th, 1866, which includes this specific item.

Bolton, Dykeman & Co., $923.15, toweling, checks, and reps. This item appears in the cash book under date of October 11th, 1866, folio 51.

I produce original voucher, being receipt of Bolton & Dykeman for $923.15, dated October 11th, 1866, for this specific item. I find no check for this item, but produce stub of check No. 202 to the order of Bolton, Dykeman & Co., $2,538.65, dated October 18th, 1866, showing this specific amount included.

B. H. Shoemaker, $106.80 for glass. This item appears in the cash book under date of October 17th, 1866, folio 51.

I produce the original voucher, being receipt of B. H. Shoemaker for $106.80, dated October 17th, 1866, for this specific item, indorsed by the superintendent that it is for equipment. I find no check, but produce stub of check No. 275, Girard, to the order of B. H.

Shoemaker for $1,337.83, dated October 17th, 1866, showing this specific amount included.

B. H. Shoemaker, $660.35 for glass. This item appears in the cash book under date of October 17th, 1866, folio 51.

I produce the original voucher, being receipt of B. H. Shoemaker for $660.35, dated October 17th, 1866, for this specific item, indorsed by the superintendent that it is for equipment of car No. 70. I find no check, but produce stub of check No. 275, Girard, to the order of B. H. Shoemaker for $1,337.83, dated October 17th, 1866, with this specific amount included.

1725 B. H. Shoemaker, $570.68 for glass. This item appears in the cash book under date of October 17th, 1866, folio 51.

I produce the original voucher, being receipt of B. H. Shoemaker for $570.68, dated October 17th, 1866, for this specific item, indorsed by the superintendent to be for equipment of car No. 6 remodeled at Allegheny. I find no check, but produce stub of check No. 275, Girard, to the order of B. H. Shoemaker for $1,337.83, dated October 17th, 1866, showing this specific amount included.

Doughten, Renshaw & Wilkins, $95.57 for ticking and duck. This item appears in the cash book under date of October 17th, 1866, folio 51.

I produce the original voucher, being receipt of Doughten, Renshaw & Wilkins for $1,215.67, dated October 17th, 1866, for various items, including the item of $95.57, indorsed by the superintendent that $95.57 of this amount is for equipment. I find no check, but produce stub of check No. 274, Girard, to the order of Doughten, Renshaw & Wilkins for $1,215.57, dated October 17th, 1866, showing this specific amount included.

Bolton, Dykeman & Co., $5,000 on account of cars Nos. 71 and 72. This item appears in the cash book under date of October 3d, folio 51.

I produce the original voucher, being receipt of Bolton, Dykeman & Co for $5,000, dated October 3d, 1866, for this specific item. I find no check for this item, but produce stub of check No. 197, Citizens' Bank of Pittsburgh, to the order of Bolton, Dykeman & Co., for $5,000, dated October 3d, 1866, for this specific item.

I also produce the original treasurer's abstract of payments for the month of October, 1866, filed among the company's papers at that date, and including the various items for the month which I have hereinbefore given.

The next item on the ledger, folio 6, is a charge of $2,974.66, which includes the following items:

Wilhelm & Neuman, $250.87 for hardware. This item appears in the cash book under date of October 4th, 1866, folio 49.

1726 I produce the original voucher, being receipt of Wilhelm & Neuman for $250.87, dated October 4th, 1866, for this specific item, indorsed that it is for equipment. I find no check for this item.

Charles Lafferty, $10, hauling. This item appears in the cash book under date of October 3d, 1866, folio 49.

I produce the original voucher, being receipt of Charles Lafferty

for $10, dated October 3d, 1866, for this specific item, indorsed that it is for equipment. I find no check for this item.

James Spear, $2.50 for registers. This item appears in the cash book under date of October 2d, 1866, folio 49.

I produce the original voucher, being receipt of James Spear for $2.50, dated October 2d, 1866, for this specific item, stated therein to be for silver palace No. 3, indorsed that it is for equipment. I find no check for this item.

Bolton, Dykeman & Co., $1,778.32, car-work. This item appears in the ledger under date of September 29th, 1866, folio 49.

I produce original voucher, being receipt of Bolton, Dykeman & Co. for $1,778.32, dated September 29th, 1866, for this specific item, certified by the superintendent to be correct and indorsed that it is for equipment. I find no check for this item, but produce stubs of check No. 63, Girard, to the order of Bolton, Dykeman & Co., dated September 16th, 1866, for $1,500, and stub No. 66, Girard, dated September 29th, 1866, to the order of Bolton, Dykeman & Co. for $278.32, covering this specific amount.

Wilhelm & Neuman, $399.42 for hardware. This item appears in the cash book under date of September 11th, 1866, folio 49.

I produce the original voucher, being the receipt of Wilhelm & Neuman for $399.42, dated September 11th, 1866, for this specific item, indorsed that it is for equipment. I find no check, but produce stub of check No. 57, Girard, to the order of R. Hays for $2,140.84, dated September 11th, 1866, showing this specific amount included.

1727 Doughten, Renshaw & Wilkins, $508.80 for sheetings, ticks, &c. This item appears in the cash book under date September 11th, 1866, folio 49.

I produce the original voucher, being receipt of Doughten, Renshaw & Wilkins for $748.05, dated September 11th, 1866, for various items, including the item of $508.80, indorsed with certificate that $508.80 of this item is for equipment. I find no check, but produce stub of check No. 57, Girard, to the order of R. Hays for $2,140.84, dated September 11th, 1866, with this specific amount included.

James Spear, $20.75, spittoons. This item appears in the cash book under date of September 11th, 1866, folio 49.

I produce the original voucher, being receipt of James Spear for $20.75, dated September 11th, 1866, for this specific item, indorsed to be for equipment. I find no check, but produce stub of check No. 57, Girard, to the order of R. Hays, for $2,140.84, dated September 11th, 1866, with this specific amount included.

Charles Lafferty, $4 for hauling. This item appears in the cash book under date of September 2d, 1866, folio 49.

I produce the original voucher, being receipt of Charles Lafferty for $4, dated August 31st, 1866, for this specific item, stated thereon to be for car No. 31, indorsed to be for equipment. I find no check for this item.

I produce the original treasurer's abstract of payments for the month of September, 1866, filed among the company's papers at

that date, and including the various items for the month which I have hereinbefore given.

The next item on the ledger, folio 6, is a charge of $3,249.81, which includes the following items:—

S. M. Atwell, $46.32, sewing. This item appears in the cash book under date of August 31st, 1866, folio 48.

I produce the original voucher, being receipt of S. M. Atwell for $109.32, dated August 31st, 1866, for various items, including the item of $46.32, indorsed with the certificate that $46.32 of this item is for equipment. I find no check for this item.

1728 Joseph Wood, Red Bank, N. J., $100, assignment of patent for improved shoe for car brakes. This item appears in the cash book under date of August 31st, 1866, folio 48.

I produce the original voucher, being receipt of Joseph Wood and E. R. Bennett for this specific item. I find no check, but produce stub of check No. 2261, Girard, to the order of Joseph Wood for $100, dated August 16th, 1866.

Pennsylvania Railroad Company, $2,232.75, remodeling. This item appears in the cash book under date of August 22d, 1866, folio 48.

I produce the original voucher, being receipt of the Pennsylvania railroad for $2,232.75, dated August 22d, 1866, for this specific item. I find no check for this item, but produce stub — check No. 188, Citizens' — of Pittsburg, to the order of E. H. Williams, superintendent, for $2,232.75, dated August 21st, 1866, for this specific item.

Doughten, Renshaw & Wilkins, $870.74, sheeting. This item appears in the cash book under date of August 16th, 1866, folio 48.

I produce the original voucher, being receipt of Doughten, Renshaw & Wilkins for $870.74, dated August 16th, 1866, for this specific item, indorsed to be for equipment.

I find no check for this item, but produce stub of check No. 2258, Girard, to the order of R. Hays for $2,439.97, dated August 13th, 1868, which includes this item.

I also produce the original treasurer's abstract of payments for the month of August, 1866, filed among the company's papers at that date, and including the various items for that month which I have hereinbefore given.

The next item on the ledger, folio 6, is a charge of $2,347.39, which includes the following items:—

James Spear, $111.75 for stoves. This item appears in the cash book under date of July 31st, 1866, folio 47.

I produce the original voucher, being receipt of James Spear for $187.75, dated July 11th, 1866, for various items, including the item of $111.75, with a memorandum thereon that $111.75 of said item was for silver palace, indorsed that $111.75 of this amount is for equipment. I find no check for this item.

1729 Wilhelm & Neuman, $900.48 for silver palace No. 2. This item appears in the cash book under date of July 31st, 1866, folio 47.

I produce the original voucher, being receipt of Wilhelm & Neu-

man for $900.48, dated June 30th, 1866, for this specific item. I find no check for this item.

Mary A. Harvey, $57.92 for sewing. This item appears in the cash book under date of July 23d, 1866, folio 47.

I produce the original voucher, being receipt of Mary A. Harvey for $93.92, dated July 31st, 1866, for various items, including the item of $57.92, indorsed that $57.92 of this item is for equipment. I find no check for this item.

N. Rulon, $7 for plated cups. This item appears in the cash book under date of July 11th, 1866, folio 47.

I produce the original voucher, being receipt of N. Rulon, dated July 11th, 1866, for this specific item, indorsed that it is for equipment. I find no check for this item.

Pittsburgh, Fort Wayne and Chicago Railway Company, $1,270.24 for silver palace. This item appears in the cash book under date of July —, 1866, folio 47.

I produce the original voucher, being receipt of Pittsburgh, Fort Wayne and Chicago Railway Company for $1,661.93, dated July —, 1866, stated therein this account settled by draft on Jonah Woodruff for $1,661.93. Jonah Woodruff was paid the sum of $391.69 for account of error corrected in previous account, signed J. P. Henderson, treasurer, and bearing the stamp of the treasurer's office P. F. W. & C. R'y Co., July 23d, 1866.

I produce the draft of the Pittsburgh, Fort Wayne and Chicago Railway Company by J. P. Henderson on Jonah Woodruff, superintendent of the C. T. Co., Pittsburgh, Pa., for $1,661.93.

I also produce check stub No. 184, Citizens' Bank of Pittsburgh to the order of Jonah Woodruff for $5,710.80, dated July 31st, 1866, showing the amount $1,270.24 included.

I also produce the original treasurer's abstract of payments for the month of July, 1866, filed among the company's papers
1730 at that date, and including the various items for the month which I have hereinbefore given.

The next item on the ledger, folio 6, is a charge of $2,950.06, which includes the following items:—

Marietta and Cincinnati Railway Company, $2,493.31 for two sets of trucks. This item appears in the cash book under date of May 29th, 1866, folio 44.

I produce the original voucher, being receipt of William E. Watson, auditor, dated May 29th, 1866, for $2,493.31 for this specific item, indorsed to be for equipment. I find no check for this item, but produce stub of check No. 170 on Citizens' Bank of Pittsburgh to the order of W. E. Watson, auditor, Marietta and Cincinnati Railway Company, for two sets of trucks for $2,493.31, dated May 31st, 1866.

James L. Howard & Co., $456.75 for head linings. This item appears in the cash book under date of May 14th, 1866, folio 44.

I produce original voucher, being receipt of James L. Howard & Co. for $456.75, dated May 14th, 1866, for this specific item. I find no check, but produce stub of check No. 1651, Girard, to the order

of J. L. Howard & Co. for head linings, $456.75, dated May 12th, 1866.

I also produce the original treasurer's abstract of payments for the month of May, 1866, filed among the company's papers at that date, and including the various items for the month which I have hereinbefore given.

The next item on the ledger, folio 6, is a charge of $10.

Charles Lafferty, $10 for hauling cars 67 and 68. This item appears on the cash book under date of April 30th, 1866, folio 43.

I produce original voucher, being receipt of Charles Lafferty for $10, dated January 24th, 1866, for this specific item. I find no check for this item.

I also produce the original treasurer's abstract of payments for the month of April, 1866, filed among the company's papers at that date, and including the various items for the month which I have hereinbefore given.

The next item on the ledger, folio 6, is a charge of $1,346.74, 1731 ledger entry to running expenses. No voucher or check for this item.

The next item on the ledger, folio 5, is a charge of $10,728.28, which includes the following items:

B. F. Kerr, $2 for hooks and eyes. This item appears in the cash book under date of March 27th, 1866, folio 41.

I produce the original voucher, being receipt of B. F. Kerr for $2, dated March 27th, 1866, for this specific item, indorsed to be for equipment. I find no check for this item.

Philadelphia, Wilmington and Baltimore railroad, $1,927.14, trucks for cars Nos. 59 and 60. This item appears in the cash book under date of March 24th, 1866, folio 41.

I produce the original voucher, being receipt of Philadelphia, Wilmington and Baltimore railroad for $1,927.14, dated March 24th, 1866, for this specific item. I find no check for this item, but produce stub of check No. 1183, Girard, to the order of H. F. Kenney, superintendent, for $2,337.08, dated March 24th, 1866, showing this specific amount included.

Bolton, Dykeman & Co., $4,672.10, account cars Nos. 65 and 66. This item appears in the cash book under date of March 18th, 1866, folio 41.

I produce original voucher, being receipt of Bolton, Dykeman & Co. for $4,672.10, dated March 13th, 1866, for this specific item, stated thereon to be for cars Nos. 65 and 66. I find no check for this item, but produce stub of check No. 1175 to the order of Bolton, Dykeman & Co. for balance of cars Nos. 65 and 66, $4,672.10, less O. W. Childs' loan $2,000, $2,672.10, dated March 13th, 1866.

Wilhelm & Neuman, $793.14 for hardware. This item appears in the cash book under date of March 9th, 1866, folio 41.

I produce the original voucher, being receipt of Wilhelm and Neumann for $793.14, dated March 13th, 1866, for this specific item, indorsed for equipment account. I find no check for this item, but produce stub of check No. 1174, Girard, to the order of

R. Hays for $1,345.32, dated March 9th, 1866, showing this specific amount included.

Leedom & Shaw, $179.24 for carpets. This item appears in the cash book under date of March 9th, 1866, folio 41.

1732 I produce original voucher, being receipt of Leedom & Shaw for $179.24, dated March 9th, 1866, for this specific item, indorsed to be for equipment. I find no check, but produce stub of check No. 1174, Girard, to the order of R. Hays for $1,345.32, dated March 9th, 1866, showing this specific amount included.

W. H. Horstmann & Sons, $22.50 for lace, silver palace No. 5. This item appears in the cash book under date of March 9th, 1866, folio 41.

I produce the original voucher, being receipt of W. H. Horstmann & Sons for $22.50, dated March 9th, 1866, for this specific item, indorsed to be for equipment. I find no check for this item, but produce stub of check No. 1174, Girard, to the order of R. Hays for $1,345.82, dated March 9th, 1866, showing this specific amount included.

Doughten, Renshaw & Wilkins, $125.44 for sheeting. This item appears in the cash book under date of March 9th, 1866, folio 41.

I produce original voucher, being receipt of Doughten, Renshaw & Wilkins for $125.44, dated March 9th, 1866, for this specific item, indorsed to be for equipment. I find no check for this item, but produce stub of check No. 1174, Girard, to the order of R. Hays for $1,345.82, dated March 9th, 1866, showing this specific amount included.

W. H. Carryl, $842.89 for rep, terry, and tapestry. This item appears in the cash book under date of March 9th, 1866, folio 41.

I produce the original voucher, being receipt of W. H. Carryl for $842.89, dated March 9th, 1866, for this specific item, indorsed to be for equipment.

I produce stub of check No. 1173 to the order of W. H. Carryl for $842.89, dated March 9th, 1866, for this specific item.

Bolton, Dykeman & Co., $2,163.83 for cars Nos. 67 and 68. This item appears in the cash book under date of March 9th, 1866, folio 41.

I produce the original voucher, being receipt of Bolton, Dykeman & Co. for $2,163.83, dated March 9th, 1866, for this
1733 specific item, stated therein to be for balance on cars Nos. 67 and 68.

I produce stub No. 1172, Girard, to the order of Bolton, Dykeman & Co. for cars Nos. 67 and 68, balance $2,163.83, dated March 9th, 1866, for this specific item.

I also produce the original treasurer's abstract of payments for the month of March, 1866, filed among the company's papers at that date, and including the various items for the month which I have hereinbefore given.

The next item on the ledger, folio 5, is a charge of $428.81, which includes the following items:—

S. M. Atwell, $20.40 for sewing. This item appears in the cash book under date of February 13th, 1866, folio 39.

I produce original voucher, being receipt of S. M. Atwell for $20.40, dated February 28th, 1866, for this specific item, indorsed to be for equipment. I find no check for this item.

J. B. Shannon, $4.57 for brushes. This item appears in the cash book under date of February 13th, 1866, folio 39.

I produce the original voucher, being receipt of J. B. Shannon for $4.57, dated February 16th, 1866, for this specific item. I find no check for this item.

C. Brintzinghoffer, $5.40 for brushes. This item appears in the cash book under date of February 13th, 1866, folio 39.

I produce the original voucher, being receipt of C. Brintzinghoffer for $5.40, dated February 15th, 1866, for this specific item, indorsed to be for equipment. I find no check for this item.

James Spear, $20 for spittoons. This item appears in the cash book under date of February 13th, 1866, folio 39.

I produce the original voucher, being receipt of James Spear for $20, dated February 14th, 1866, for this specific item, stated therein to be for equipment of cars Nos. 67 and 68. I find no check for this item, but produce stub of check No. 988, Girard, to the order of R. Hays for $850.77, dated February 13th, 1866, showing this specific amount included.

Leedom & Shaw, $250.66 for carpets. This item appears in the cash book under date of February 13th, 1866, folio 39.

1734 I produce the original voucher, being receipt of Leedom & Shaw for $250.66, dated February 13th, 1866, for this specific item, indorsed to be for equipment.

I produce stub of check No. 988 to the order of R. Hays, $850.77, dated February 13th, 1866, showing this specific amount included.

Doughten, Renshaw & Wilkins, $127.78 for toweling. This item appears in the cash book, February 13th, 1866, folio 39.

I produce the original voucher, being receipt of Doughten, Renshaw & Wilkins for $127.78, dated February 13th, 1866, for this specific item, indorsed to be for equipment.

I produce stub of check No. 988 to the order of R. Hays for $850.77, dated February 13th, 1866, showing this specific amount included.

I also produce the original treasurer's abstract of payments for the month of February, 1866, filed among the company's papers at that date, and including the various items for the month which I have hereinbefore given.

The next item on the ledger, folio 5, is a charge of $195.09, which includes the following items:—

Mary A. Harvey, $69.73, sewing. This item appears in cash book under date of January 31st, 1866, folio 38.

I produce the original voucher, being receipt of Mary A. Harvey for $69.73, dated January 31st, 1866, for this specific item, indorsed to be for equipment. I find no check for this item.

Jennie Norman, $24 for sewing. This item appears in the cash book under date of January 31st, 1866, folio 38.

I produce original voucher, being receipt of Jennie Norman for $24, dated January 31st, 1866, for this specific item indorsed to be for equipment. I find no check for this item.

S. M. Atwell, $47.76, sewing. This item appears in the cash book under date of January 31st, 1866, folio 38.

I produce the original voucher, being receipt of S. M. Atwell for $47.76, dated January 31st, 1866, for this specific item, indorsed to be for equipment. I find no check for this item.

1735 C. Brintzinghoffer, $33.60 for brushes. This item appears in the cash book under date of January 31st, 1866, folio 38.

I produce original voucher, being receipt of C. Brintzinghoffer for $33.60, dated January 17th, 1866, for this specific item, indorsed to be for equipment. I find no check for this item.

Charles Lafferty, $20, hauling cars. This item appears in the cash book under date of January 31st, 1866, folio 38.

I produce original vouchers, being receipt of Charles Lafferty for $20, dated December 1st, 1865, and January 1st, 1866, for this specific item, and indorsed to be for equipment. I find no check for this item.

The next item on the ledger, folio 5, is a charge of $3,500, as follows:

Bolton, Dykeman & Co., $500 on account cars Nos. 67 and 68. This item appears in the cash book under date of January 22d, 1866, folio 37.

I produce the original voucher, being receipt of Bolton, Dykeman & Co. for $500, dated January 22d, 1866, for this specific item, indorsed to be for equipment of cars Nos. 67 and 68.

I find no check for this item, but produce stub of check No. 802, Girard, to the order of O. W. Childs, S. T. Co., $2,500, Bolton, Dykeman & Co., on account of cars Nos. 67 and 68, $500, $3,000

Bolton, Dykeman & Co., $3,000 for cars Nos. 65 and 66. This item appears in the cash book under date of January 16th, 1866, folio 37.

I produce the original voucher, being receipt of Bolton, Dykeman & Co., dated January 16th, 1866, for this specific item, stated therein to be for advance on account of cars Nos. 65 and 66, indorsed to be for equipment.

I find no check for this item, but produce stub of check No. 800, Girard, to the order of Bolton, Dykeman & Co. on account of cars Nos. 65 and 66, $3,000, dated January 16th, 1866.

The next item on the ledger, folio 5, is a charge of $2,000, as follows:

Bolton, Dykeman & Co., $2,000 on account cars Nos. 65 and
1736 66. This item appears in the cash book under date of January 10th, 1866, folio 37.

I produce the original voucher, being receipt of Bolton, Dykeman & Co. for $2,000, dated January 10th, 1866, for this specific item, indorsed to be for equipment.

I find no check for this item, but produce stub of check No. 792,

to the order of Bolton, Dykeman & Co., on account cars Nos. 65 and 66, $2,000, dated January 10th, 1866, for this specific item.

Indianapolis and Cincinnati Railroad Company, $2,566.19 for trucks for cars Nos. 43 and 44. This item appears in the cash book under date of January 6th, folio 37.

I produce the original voucher, being receipt of Indianapolis and Cincinnati Railroad Company for $2,566.19, dated December 9th, 1865, for this specific item.

I produce the original check of the company to the order of H. C. Lord, Esq., president of the I. & C. R. R., for $2,566.19, dated January 6th, 1866, indorsed by the payee, and with the bank's stamp of payment. This item is a charge on the ledger, folio 5, $2,566.19.

The next item on the ledger is a charge of $2,000, folio 5, as follows:

Bolton, Dykeman & Co., $2,000 on account of cars Nos. 65 and 66. This item appears in the cash book under date of January 2d, 1866, folio 37.

I produce the original voucher, being receipt of Bolton, Dykeman & Co. for $2,000, dated January 2d, 1866, indorsed to be for equipment of cars Nos. 65 and 66. I find no check, but produce stub of check No. 136, Citizens' Bank of Pittsburgh, to the order of Bolton, Dykeman & Co., for advance on cars Nos. 65 and 66, $2,000, dated January 22d, 1866.

The next item on the ledger, folio 5, is a charge of $874.22, which includes the following items:

Doughten, Renshaw & Wilkins, $545.40 for dry goods. This item appears in the cash book under date of December 31st, 1865, folio 36.

I produce the original voucher, being receipt of Doughten, Renshaw & Wilkins for $545.40, dated January 12th, 1866, for this specific item, indorsed to be for equipment.

1737 I produce stub of check No. 795, Girard, to the order of bills, for $2,060.14, dated January 12th, 1866, showing this specific amount included.

Leedom & Shaw, $310.32 for carpets. This item appears in the cash book under date of December 31st, 1865, folio 36.

I produce original voucher, being receipt of Leedom & Shaw for $310.32, dated January 12th, 1866, for this specific item, indorsed to be for equipment.

I produce stub of check No. 795, Girard, for $2,060.14, dated January 12th, 1866, showing this specific amount included.

James Spear, $18.50, spittoons. This item appears in the cash book under date of December 31st, 1865, folio 36.

I produce no voucher for this item, but produce stub of check No. 795, Girard, for $2,060.14, dated January 12th, 1866, showing this specific amount included.

S. M. Atwell, $46.28, sewing. This item appears in the cash book under date of December 31st, 1866, folio 36.

I produce the original voucher, being receipt of S. M. Atwell for

$46.28, dated December 31st, 1865, for this specific item, indorsed to be for equipment. I find no check for this item.

Mary A. Harvey, $34 for sewing. This item appears in the cash book under date of December 30th, 1865, folio 36.

I produce the original voucher, being receipt of Mary A. Harvey for $34, dated December 30th, 1865, for this specific item, and indorsed to be for equipment. I find no check for this item.

Bolton, Dykeman & Co., $2,000 on account of cars Nos. 67 and 68. This item appears in the cash book under date of December 26th, 1865, folio 36.

I produce the original voucher, being receipt of Bolton, Dykeman & Co. for $2,000, dated December 26th, 1865, for this specific item, stated thereon to be on account of cars Nos. 67 and 68, indorsed to be for equipment.

I produce stub of check No. 136, Citizens' Bank of Pittsburgh, to the order of Bolton, Dykeman & Co., advance on cars Nos. 67 and 68, $2,000, and dated December 26th, 1865.

1738 J. B. Shannon, $3.50 for wrenches. This item appears in the cash book under date of December 21st, 1865, folio 36.

I produce the original voucher, being receipt of J. B. Shannon for $3.50, dated December 23d, 1865, for this specific item, indorsed to be for equipment. I find no check for this item.

C. Brintzinghoffer, $9.60, brushes. This item appears in the cash book under date of December 19th, 1865, folio 36.

I produce original voucher, being receipt of C. Brintzinghoffer for $9.60 for this specific item, indorsed to be for equipment. I find no check for this item.

New Jersey Manufacturing Company, $136 for comforts. This item appears in the cash book under date of December 19th, 1865, folio 36.

I produce the original voucher, being receipt of the New Jersey Manufacturing Company for $136, dated December 19th, 1865, for this specific item. I find no check for this item.

Bolton, Dykeman & Co., $3,000 on account of cars Nos. 67 and 68. This item appears in the cash book under date of December 19th, 1865, folio 36.

I produce the original voucher, being receipt of Bolton, Dykeman & Co. for $3,000, dated December 19th, 1865, for this specific item. I find no check for this item, but produce stub of check No. 614 to the order of Bolton, Dykeman & Co. on account of cars Nos. 67 and 68, $3,000, dated December 19th, 1865.

Abraham Turner, $212.40 for cotton laps. This item appears in the cash book under date of December 16th, 1865, folio 36.

I produce the original voucher, being receipt of Abraham Turner for $212.40, dated December 16th, 1865, for this specific item. I find no check for this item, but produce stub of check No. 613 to the order of A. Turner for bill of cotton laps, $212.40, dated December 16th, 1865.

Doughten, Renshaw & Wilkins, $1,576.85 for prints and sheeting. This item appears in the cash book under date of December 13th, 1865, folio 36.

1739 I produce the original voucher, being the receipt of Doughten, Renshaw & Wilkins for $1,576.85, dated December 13th, 1865, for this specific item. I find no check for this item, but produce stub of check No. 612 to the order of Doughten, Renshaw & Wilkins for $1,810.32, showing this specific amount included, dated December 16th, 1865.

New Jersey Manufacturing Company, $528 for comforts. This item appears in the cash book under date of December 13th, 1865, folio 36.

I produce the original voucher, being receipt of the New Jersey Manufacturing Company for $528, dated —— —, indorsed to be for equipment. I find no check for this item, but produce stub of check No. 611 to the order of the New Jersey Manufacturing Company for $528, dated December 13th, 1865.

The next item on the ledger, folio 5, is a charge of $2,000, as follows:

Bolton, Dykeman & Co. on account of cars Nos. 67 and 68, $2,000. This item appears in the cash book under date of December 12th, 1865, folio 35.

I produce the original voucher, being receipt of Bolton, Dykeman & Co. for $2,000, dated December 12th, 1865, for this specific item. I find no check, but produce stub of check No. 133, Citizens' Bank of Pittsburgh, to order of Bolton, Dykeman & Co., $2,000 on account of cars Nos. 67 and 68, dated December 12th, 1865.

The next item on the ledger, folio 5, is a charge of $245.61, which includes the following items:

Wilhelm & Newman, $5.60 for brush and comb racks. This item appears in the cash book under date of November 30th, 1865, folio 35.

I produce original voucher, being receipt of Wilhelm & Neuman for $58.25, dated November 30th, 1865, for various items, including the item of $5.60, indorsed to be for equipment. I find no check for this item, but produce stub of check No. 622, Girard, to the order of G. R. Dykeman for $1,869.75, dated December 30th, 1865, showing this specific amount included.

1740 James Spear, $20.50 for spittoons. This item appears in the cash book under date of November 30th, 1865, folio 35.

I produce the original voucher, being receipt of James Spear & Co. for $20.50, dated November 30th, 1865, for this specific item. I find no check for this item, but produce stub of check No. 622, Girard, to the order of G. R. Dykeman for $1,869.75, dated November 30th, 1865, showing this specific amount included.

Leedom & Shaw, $75 25 for carpets. This item appears in the cash book under date of November 30th, 1865, folio 35.

I produce the original voucher, being receipt of Leedom & Shaw for $75.25, dated November 30th, 1865, for this specific item. I find no check for this item, but produce stub of check No. 622, Girard, to the order of G. R. Dykeman for $1,869.75, dated December 30th, 1865, showing this specific amount included.

S. M. Atwell, $58.60, sewing. This item appears in the cash book under date of November 30th, 1865, folio 35.

I produce the original voucher, being receipt of S. M. Atwell for $58.60, dated November 29th, 1865, for this specific item, indorsed to be for equipment. I find no check for this item, but produce stub of check No. 429 to the order of R. Hays for $216.30, showing this specific amount included.

Jennie Norman, $47 for sewing. This item appears in the cash book under date of November 30th, 1865, folio 35.

I produce the original voucher, being receipt of Jennie Norman for $47, dated November 28th, 1865, for this specific item, indorsed to be for equipment. I find no check for this item, but produce stub of check No. 429 to the order of R. Hays for $216.30, dated November 30th, 1865, showing this specific amount included.

C. Brintzinghoffer, $11.10 for brushes. This item appears in the cash book under date of November 30th, 1865, folio 35.

I produce the original voucher, being the receipt of C. Brintzinghoffer for $11.10, dated November 20th, 1865, for this specific item. I find no check for this item, but produce stub of check No. 429 to the order of R. Hays for $216.30, dated November 30th, 1865, showing this specific amount included.

1741 Mary A. Harvey, $27.56 for sewing. This item appears in the cash book under date of November 30th, 1865, folio 35.

I produce the original voucher, being the receipt of Mary A. Harvey for $27.56, dated November 28th, 1865, for this specific item. I find no check for this item, but produce stub of check No. 429 to the order of R. Hays for $216.30, dated November 30th, 1865, showing this specific amount included.

The next item on the ledger, folio 5, is a charge of $5,000, as follows:

Bolton, Dykeman & Co., $5,000 on account of new cars Nos. 67 and 68. This item appears in the cash book under date of November 30th, 1865, folio 34.

I produce paid acceptance of Bolton, Dykeman & Co. for $5,000, dated June 5th, 1865, at sixty days, indorsed by the payee and bearing the bank's stamp of payment. I also produce original voucher, being receipt of Bolton, Dykeman & Co. for $5,000, dated November 30th, 1865, indorsed to be for equipment cars Nos. 67 and 68.

The next item on the ledger, folio 5, is a charge of $400.80, as follows:

Abraham Turner, $400.80 for cotton laps. This item appears in the cash book under date of November 25th, 1865, folio 34.

I produce original voucher, being receipt of Abraham Turner for $400.80, dated November 25th, 1865, for this specific item. I find no check for this item, but produce stub of check No. 428, Girard, to the order of A. Turner for cotton laps, $400.80, dated November 25th, 1865.

The next item on the ledger, folio 5, is a charge of $3,131.14, as follows:

Bolton, Dykeman & Co., $3,131.14, balance for cars Nos. 63 and 64. This item appears in the cash book under date of November 24th, 1865, folio 34.

I produce the original voucher, being receipt of Bolton, Dyke-

man & Co. for $3,131.14, dated November 22d, 1865, for this specific item.

I find no check for this item, but produce stub of check No. 426, Girard, to the order of Bolton, Dykeman & Co., balance for cars Nos. 63 and 64, $3,131.14, dated November 24th, 1865.

1742 The next item on the ledger, folio 5, is a charge of $5,000, as follows:

Bolton, Dykeman & Co., account of new cars Nos. 63 and 64, $5,000. This item appears in the cash book under date of November 13th, 1865, folio 34.

I produce the original voucher, being receipt of Bolton, Dykeman & Co. for $5,000, dated November 13th, 1865, for this specific item, indorsed to be for equipment.

I find no check for this item, but produce stub of check No. 127, Citizens' Bank of Pittsburgh, to the order of Bolton, Dykeman & Co. for $5,000 on account of cars Nos. 63 and 64, dated November 13th, 1865.

The next item on the ledger, folio 5, is a charge of $1,813.25, as follows:

Bellefontaine Railroad Company, $1,813.25 for two sets of six-wheel trucks. This item appears in the cash book under date of November 13th, 1865, folio 34.

I find no voucher for this item, but produce stub of check No. 128, Citizens' Bank of Pittsburgh, to the order of R. N. Brown, for bill of trucks, $2,232.94, which includes this specific item, dated November 20th, 1865.

The next item on the ledger, folio 5, is a charge of $401.77, as follows:

Bolton, Dykeman & Co., $401.77, work on cars Nos. 61 and 62. This item appears in the cash book under date of November 8th, 1865, folio 34.

I produce the original voucher, being receipt of Bolton, Dykeman & Co. for $401.77, dated November 8th, 1865, for this specific item and indorsed to be for equipment. I find no check for this item, but produce stub of check No. 125, Citizens' Bank of Pittsburgh, to the order of Bolton, Dykeman & Co. for $1,688.34, dated November 8th, 1865, showing this specific amount included.

Charles Lafferty, $25 for hauling cars. This item appears in the cash book under date of November 1st, 1865, folio 34.

I produce original voucher, being receipt of Charles Lafferty for $25, dated November 1st, 1865, for this specific item, indorsed to be for equipment.

1743 I produce stub of check No. 430 to the order of G. R. Dykeman for $157, dated November 30th, 1865, showing this specific amount included.

The next item on the ledger, folio 5, is a charge of $1,325.48, which includes the above and the following items:—

Doughten, Renshaw & Wilkins, $1,300.48 for Turkey red prints. This item appears in the cash book under date of November 1st, 1865, folio 34.

I produce the original voucher, being receipt of Doughten, Ren-

shaw & Wilkins for $1,300.48, dated November 10th, 1865, for this specific item, indorsed to be for equipment.

I find no check for this item, but produce stub of check No. 258 to the order of Doughten, Renshaw & Wilkins for $1,300.48, dated October 31st, 1865, for this specific item.

The next item on the ledger, folio 5, is a charge of $4,400, as follows:—

Bolton, Dykeman & Co., $4,400, balance for cars Nos. 61 and 62. This item appears in the cash book under date of October 31st, 1865, folio 33.

I produce original voucher, being receipt of Bolton, Dykeman & Co. for $4,400, balance for cars Nos. 62 and 61, dated October 31st, 1865, for this specific item.

I find no check for this item, but produce stub of check No. 417, Girard, to the order of Bolton, Dykeman & Co. for $4,400, dated October 31st, 1865, for this specific item.

C. Brintzinghoffer, $10.70 for brushes. This item appears in the cash book under date of October 31st, 1865, folio 33.

I produce the original voucher, being the receipt of C. Brintzinghoffer for $10.70, dated October 25th, 1865, for this specific item, indorsed to be for equipment.

I find no check for this item, but produce stub of check No. 255 to the order of R. Hays for bills for $443.37, dated October 31st, 1865, showing this specific item included.

New Jersey Manufacturing Company, $273.50, making comforts. This item appears in the cash book under date of October 31st, 1865, folio 33.

I produce the original voucher, being receipt of the New Jersey Manufacturing Company for $273.50, dated October 31st,
1744 1865, for this specific item, indorsed to be for equipment.

I find no check for this item, but produce stub of check No. 255 to the order of R. Hays for $443.37, dated October 31st, 1865, for this specific item included.

Jennie Norman, $23 for sewing. This item appears in the cash book under date of October 31st, 1865, folio 33.

I produce the original voucher, being receipt of Jennie Norman for $33, dated October 31st, 1865, indorsed for equipment.

I produce stub of check No. 255 to the order of R. Hays for $443.37, dated October 31st, 1865, showing this specific amount included.

Mary A. Harvey, $99.97 for sewing. This item appears in the cash book under date of October 31st, 1865, folio 33.

I produce the original voucher, being receipt of Mary A. Harvey for $99.97, dated October 25th, 1865, for this specific item, indorsed to be for equipment.

I produce no check for this item, but stub of check No. 255 to the order of R. Hays for $443.37, dated October 31st, 1865, showing this specific item included.

Abraham Turner, $480 for cotton laps. This item appears in the cash book under date of October 31st, 1865, folio 33.

I produce the original voucher, being receipt of Abraham Turner

for $480, dated November 4th, 1865, for this specific item, indorsed to be for equipment.

I produce stub of check No. 256 to the order of Abraham Turner for $480, dated October 31st, 1865. The above items appear on the ledger, folio 5, a charge of $887.17.

The next item on the ledger is a charge of $189.98, which includes the following items:—

Leedom & Shaw, $169.98 for carpets. This item appears in the cash book under date of October 31st, 1865, folio 33.

I produce the original voucher, being receipt of Leedom & Shaw for $255.98, dated November 10th, 1865, for various items, including the item of $169.98, indorsed to be for equipment.

1745 I produce stub of check No. 257 to the order of R. Hays for $1,019.58, dated October 31st, 1865, showing this specific amount included.

Charles Lafferty, $20 for hauling. This item appears in the cash book under date of October 31st, 1865, folio 33.

I produce the original voucher, being receipt of Charles Lafferty for $20, dated September 30th, 1865.

I produce stub of check No. 420 to the order of J. F. Cottringer for $198.91, dated October 31st, 1865, showing this specific amount included.

The next item on the ledger, folio 5, is a charge of $16,373.60, which includes the following items:

Bolton, Dykeman & Co., $6,000, balance of cars Nos. 29 and 30. This item appears in the cash book under date of October 19th, 1865, folio 32.

I produce the original voucher, being receipt of Bolton, Dykeman & Co. for $6,000, dated August 17th, 1865, for this specific item.

I produce the original acceptance of Bolton, Dykeman & Co.'s draft on the Central Transportation Company, dated August 17th, 1865, sixty days after date, for $6,000, indorsed by Bolton, Dykeman & Co., and bearing the bank's stamp of payment.

Bolton, Dykeman & Co., $10,000, account of cars Nos. 65 and 66. This item appears in the cash book under date of October 23d, 1865, folio 32.

I find no voucher for this item, but produce stub of check No. 117, Citizens' Bank of Pittsburgh, to the order of Bolton, Dykeman & Co., on account of cars 65 and 66, $10,000, dated October 23d, 1865.

Abraham Turner, $373.60 for cotton laps. This item appears in the cash book under date of October 21st, 1865, folio 32.

I produce the original voucher, being receipt of Abraham Turner for $373.60, dated October 31st, 1865, for this specific item, indorsed to be for equipment.

I produce stub of the check No. 248 to the order of Abraham Turner for $373.60, dated October 21st, 1865.

1746 The next item on the ledger, folio 5, is a charge of $1,404.34, which includes the following items:

Paxson, Schubert & Co., $1,304.34 for sheeting. This item appears in the cash book under date of October 14th, 1865, folio 32.

I produce the original vouchers, being receipts of Paxson, Schubert & Co. for $99.05 and $1,205.29, dated October 14th, 1865, for this specific item, stated to be for equipment.

I produce stub of check No. 245 to the order of Paxson, Schubert & Co. for $1,304.34, dated October 14th, 1865.

John Lightner, $100 for use of patent axle boxes. This item appears in the cash book under date of October 14th, 1865, folio 32.

I produce the original voucher, being license of John Lightner for $100, dated October 12th, 1865, for this specific item.

I produce stub of check No. 244 to the order of —— —— for $211.95, dated October 17th, 1865, showing this specific amount included.

The next item on the ledger, folio 5, is a charge of $9,380.84, which includes the following items:

Bolton, Dykeman & Co., $5,000 on account of new cars Nos. 63 and 64. This item appears in the cash book under date October 7th, 1865, folio 32.

I produce original voucher, being receipt of Bolton, Dykeman & Co., dated October 7th, 1865, for $5,000, this specific item.

I produce stub of check No. 116, Citizens' Bank of Pittsburgh, to the order of Bolton, Dykeman & Co., on account of cars Nos. 63 and 64, for $5,000, dated October 7th, 1865.

Bolton, Dykeman & Co., $2,230.84, two sets of trucks. This item appears in the cash book under date of October 7th, 1865, folio 32.

I produce the original voucher, being receipt of Bolton, Dykeman & Co. for $2,230.84, dated October 7th, 1865, for two sets of trucks, cars Nos. 29 and 30.

I produce stub of check No. 115, Citizens' Bank of Pittsburgh, for $2,230.84, to the order of Bolton, Dykeman & Co., dated October 7th, 1865, for this specific item.

1747 Central Ohio Railway Company, $2,150 for two sets of trucks, cars Nos. 45 and 46. This item appears in the cash book under date of October 7th, 1865, folio 32.

I produce the original voucher, being receipt of William Wing, Central Ohio Railroad Company, for $2,150, dated October 9th, 1865.

I produce stub of check No. 114 to the order of the Central Ohio Railroad Company, $2,150, dated October 7th, 1865.

The next item on the ledger, folio 5, is a charge of $37, as follows:—

Pearce & McCartney, $37. This item appears in the cash book under date of September 30th, 1865, folio 31.

I produce the original voucher, being receipt of Pearce & McCartney for $37 for this specific item, dated September 30th, 1865.

I produce stub of check No. 230 to the order of R. Hays for $246.15, dated September 30th, 1865, showing this specific amount included.

The next item on the ledger, folio 5, is a charge of $2,324.40, which includes the following items:—

New Jersey Manufacturing Company, $100, making quilts. This

item appears in the cash book under date of September 30th, 1865, folio 31.

I produce the original voucher, being receipt of the New Jersey Manufacturing Company for $100, dated October 9th, 1865, for this specific item, indorsed to be for equipment.

I produce stub of check No. 241, Girard, for $131.85, dated October 5th, 1865, showing this specific amount included.

New Jersey Manufacturing Company, $126 for making quilts. This item appears in the cash book under date of September 30th, 1865, folio 31.

I produce the original voucher, being receipt of the New Jersey Manufacturing Company for $126, dated September 18th, 1865, for this specific item.

I produce stub of check No. 230, Girard, to the order of R. Hays for $246.15, dated September 30th, 1865, showing this specific amount included.

1748 C. Brintzinghoffer, $32.40 for brushes. This item appears in the cash book under date of September 30th, 1865, folio 31.

I produce the original voucher, being receipt of C. Brintzinghoffer for $32.40 for this specific item, indorsed to be for equipment.

I produce stub of check No. 230, Girard, to the order of R. Hays for $246.15, dated September 30th, 1865, showing this specific amount included.

Joseph Blackwood, $145.94 for carpet. This item appears in the cash book under date of September 30th, 1865, folio 31.

I produce the original voucher, being receipt of Joseph Blackwood for $145.94, dated October 4th, 1865, for this specific item.

I produce stub of check No. 174, Girard, to the order of R. Hays for $221.56, dated September 30th, 1865, showing this specific amount included.

Doughten, Renshaw & Wilkins, $1,920.06, sheetings. This item appears in the cash book under date of September 30th, 1865, folio 31.

I produce the original voucher, being receipt of Doughten, Renshaw & Wilkins for $1,920.06, dated September 30th, 1865, for this specific item, indorsed to be for equipment.

I produce stub of check No. 172, Girard, for $1,970.66, to the order of Doughten, Renshaw & Wilkins, dated September 30th, 1865, showing this specific amount included.

The next item on the ledger, folio 5, is a charge of $180, as follows:—

Abraham Turner, $180 for cotton bats. This item appears in the cash book under date of September 16th, 1865, folio 30.

I produce the original voucher, being receipt of Abraham Turner for $180, dated September 16th, 1865, for this specific item.

I produce stub of check No. 159, Girard, to the order of Abraham Turner for $180, dated September 16th, 1865.

The next item on the ledger is a charge of $10,000, as follows:—

Bolton, Dykeman & Co., $10,000 on account new cars Nos. 61 and 62. This item appears in the cash book under date Sep-

1749 tember 9th, 1865, folio 30. I find no voucher for this item,

but produce stub of check No. 142, Girard, to the order of Bolton, Dykeman & Co. for $10,000 on account cars Nos. 61 and 62, dated September 9th, 1865.

The next item on the ledger, folio 5, is a charge $7,500 as follows:

Pennsylvania Railroad Company, six sets of trucks. This item appears in the cash book under date of September 8th, 1865, folio 30.

I produce the original voucher, being receipt of Pennsylvania Railroad Company for $7,500, dated September 11th, 1865, for this specific item, indorsed to be for equipment. I find no check for this item, but produce stub of check No. 141, Girard, for $7,500 to the order of Enoch Lewis, dated September 8th, 1865.

The next item on the ledger, folio 5, is a charge of $2,252.78, which includes the following items:

Philadelphia, Wilmington and Baltimore Railroad Company, $266.67 for use of car No. 36 from May 1st, 1864, to January 1st, 1865. This item appears in the cash book under date of September 2d, 1865, folio 30.

I produce original voucher, being receipt of Philadelphia, Wilmington and Baltimore Railroad Company for $266.67, dated September 2d, 1865, for this specific item.

I produce stub of check No. 139, Girard, to the order of H. F. Kenney for $2,252.78, showing this specific amount included, dated September 2d, 1865.

Philadelphia, Wilmington and Baltimore Railroad Company, $1,986.11 for two sets of trucks. This item appears in the cash book under date of September 2d, 1865, folio 30.

I produce the original voucher, being receipt of the Philadelphia, Wilmington and Baltimore Railroad Company for $1,986.11, dated September 2d, 1865, for this specific item, stated to be for equipment.

I produce original stub of check No. 139 to the order of H. F. Kenney for $2,252.78, dated September 2d, 1865, showing this specific amount included.

1750 The next item on the ledger, folio 5, is a charge of $48.30, as follows:

Mary A. Harvey, $48.30 for sewing. This item appears in the cash book under date of August 31st, 1865, folio 29.

I produce the original voucher, being receipt of Mary A. Harvey for $48.30, dated July 31st, 1865, for this specific item.

I produce stub of check No. 147, Girard, to the order of G. R. Dykeman, $163, dated September 11th, 1865, showing this specific amount included.

The next item on the ledger, folio 5, is a charge of $367.47, which includes the following items:

Doughten, Renshaw & Wilkins, $285.10 for prints. This item appears in the cash book under date of August 31st, 1865, folio 29.

I produce the original voucher, being receipt of Doughten, Renshaw & Wilkins for $285.10, dated September 1st, 1865, for this specific item, indorsed to be for equipment.

I produce stub of check No. 150, Girard, for $516.87, dated September 12th, 1865, showing this specific amount included.

Bolton, Dykeman & Co., $72.37 for work on cars Nos. 57 and 58. This item appears in the cash book under date of August 31st, 1865, folio 29.

I produce the original voucher, being receipt of Bolton, Dykeman & Co. for $72.37, dated September 14th, 1865, for this specific item, indorsed to be for equipment. I find no check for this item.

Jacob Fisher, $10 for hauling. This item appears in the cash book under date of August 31st, 1865, folio 29.

I produce the original voucher, being receipt of Jacob Fisher for $10, dated July 27th, 1865, for this specific item, indorsed to be for equipment.

I produce stub of check No. 147, Girard, to the order of G. R. Dykeman for $163, dated September 11th, 1865, showing this specific amount included.

Jennie Norman, $31 for sewing. This item appears in the cash book under date of August 7th, 1865, folio 29.

1751 I produce the original voucher, being receipt of Jennie Norman for $31, dated July 31st, 1865, for this specific item, indorsed by the superintendent to be for equipment.

I produce stub of check No. 147, Girard, to the order of G. R. Dykeman for $163, dated September 11th, 1865, showing this specific amount included.

C. Brintzinghoffer, $7.80 for brushes. This item appears in the cash book under date of August 7th, 1865, folio 29.

I produce the original voucher, being receipt of C. Brintzinghoffer for $7.80, dated July 20th, 1865, for this specific item, indorsed to be for equipment.

I produce stub of check No. 147, to the order of G. R. Dykeman for $163, dated September 11th, 1865, showing this specific amount included.

Reeve L. Knight & Sons, $16 for cocoa mats. This item appears in the cash book under date of August 7th, 1865, folio 29.

I produce the original voucher, being receipt of Reeve L. Knight & Son for $16, dated July 19th, 1865, for this specific item, indorsed by the superintendent to be for equipment.

I produce stub of check No. 147, to the order of G. R. Dykeman, dated September 11th, 1865, for $163, showing this specific amount included.

The next item on the ledger, folio 5, is a charge of $3,000, as follows:

Bolton, Dykeman & Co., $3,000 on account of cars Nos. 29 and 30. This item appears in the cash book under date of August 15th, 1865, folio 29.

I find no voucher for this item, but produce stub of check No. 1045, Girard, to the order of Bolton, Dykeman & Co. on account cars Nos. 29 and 30, $3,000, dated August 16th, 1865.

The next item on the ledger, folio 5, is a charge of $54.80, as follows:

Jennie Norman, $31; C. Brintzinghoffer, $7.80; R. L. Knight & Son, $16. Particulars of vouchers given above.

The next item on the ledger, folio 5, is a charge of $3,000, as follows:

1752 Bolton, Dykeman & Co., $3,000 on account of cars Nos. 29 and 30. This item appears under date of August 7th, 1865, folio 29.

I find no voucher for this item, but produce stub of check No. 107 to the order of Bolton, Dykeman & Co. on Citizens' bank, Pittsburgh, on account of cars Nos. 29 and 30, $3,000, dated August 7th, 1865.

The next item on the ledger, folio 5, is a charge of $5,000, as follows:

Bolton, Dykeman & Co., $5,000 on account of cars No. 59 and 60. This item appears in the cash book under date of August 7th, 1865, folio 29.

I find no voucher for this item, but produce stub of check No. 1034, Girard, to the order of Bolton, Dykeman & Co. for $5,000, dated August 7th, 1865.

The next item on the ledger, folio 5, is a charge of $225.98, as follows:

Doughten, Renshaw & Wilkins, $225.98 for toweling and sheeting. This item appears in the cash book under date of July 31st, 1865, folio 28.

I find no voucher for this item, but produce stub of check No. 1036, Girard, to the order of Doughten, Renshaw & Wilkins, muslins and huck, $225.98, dated August 7th, 1865.

The next item on the ledger, folio 5, is a charge of $32.50, as follows:

James Spear, $32.50 for spittoons. This item appears in the cash book under date of July 31st, 1865, folio 28.

I produce the original voucher, being receipt of James Spear for $32.50, dated August 4th, 1865, for this specific item, indorsed to be for equipment.

I produce stub of check No. 1033, Girard, to the order of James Spear for $73, dated August 3d, 1865, showing this specific amount included.

The next item on the ledger, folio 5, is a charge of $10,081.12, which includes the following items:

Bolton, Dykeman & Co., $10,000 on account of cars Nos. 57 and 58. This item appears in the cash book under date of July 3d and 18th, 1865, folio 28.

1753 I produce the original voucher, being receipt of Bolton, Dykeman & Co. for two acceptances $5,000 each for this specific item, indorsed to be for equipment.

I produce acceptances, being Bolton, Dykeman & Co.'s drafts on the Central Transportation Company for $5,000 each, dated May 1st and 16th, 1865, at sixty days, accepted by the Central Transportation Company, indorsed by Bolton, Dykeman & Co., and bearing the bank's stamp of payment.

Mary A. Harvey, $81.12 for sewing. This item appears in the cash book under date of July 1st, 1865, folio 28.

I produce the original voucher, being receipt of Mary A. Harvey for $81.12, dated June 4th, 1865, for this specific item, indorsed to be for equipment. I find no check for this item.

The next item on the ledger, folio 4, is a charge of $3,000, as follows:—

Bolton, Dykeman & Co., $3,000 on account of cars Nos. 59 and 60. This item appears in the cash book under date of June 30th, 1865, folio 27.

I find no voucher for this item, but produce stubs of checks Nos. 98 and 102, Citizens' Bank of Pittsburgh, to the order of Bolton, Dykeman & Co., balance of cars Nos. 59 and 60, the first for $2,000, the second for $1,354.23, but showing this specific amount included, dated June 27th and July 7th, 1865.

The next item on the ledger, folio 4, is a charge of $20, as follows:—

Jacob Fisher, $20 for hauling cars. This item appears in the cash book under date of June 19th, 1865, folio 27.

I produce original voucher, being receipt of Jacob Fisher for $20, dated June 16th, 1865, for this specific item. I find no check for this item.

The next item on the ledger, folio 5, is a charge of $36.25, as follows:—

James Spear, $32.25 for spittoons and water tank. This item appears in the cash book under — of June 15th, 1865, folio 27.

I produce the original voucher, being receipt of James Spear for $36.25, dated June 15th, 1865, for this specific item, indorsed to be for equipment.

1754 I produce stub of check No. 697, Girard, to the order of James Spear for $69.25, dated June 15th, 1865, and showing this specific amount included.

The next item on the ledger, folio 4, is a charge of $271.26, as follows:—

Joseph Blackwood, $271.26 for carpets. This item appears in the cash book under date of June 14th, 1865, folio 27.

I produce the original voucher, being receipt of J. Blackwood for $271.26, dated June 14th, 1865, indorsed to be for equipment and stub of check No. 696, Girard, to the order of Joseph Blackwood for $333.51, showing this specific amount included.

The next item on the ledger, folio 4, is a charge of $10.27, as follows:—

C. Brintzinghoffer, $10.27 for brushes. This item appears in the cash book under date of June 5th, 1865, folio 26.

I produce the original voucher, being receipt of C. Brintzinghoffer for $10.27, dated June 5th, 1865, indorsed to be for equipment. I find no check for this item.

The next item on the ledger, folio 4, is a charge of $207, which includes the following items:—

Joseph Blackwood, $39 for mats. This item appears in the cash book under date of June 3d, 1865, folio 26.

I produce the original voucher, being receipt of J. Blackwood for $39, dated June 3d, 1865, for this specific item, indorsed to be for equipment. I find no check for this item.

Jennie Norman, $28 for sewing. This item appears in the cash book under date of June 1st, 1865, folio 26.

I produce the original voucher, being receipt of Jennie Norman for $28, dated June 1st, 1865, for this specific item, indorsed to be for equipment.

I produce stub of check No. 636, Girard, to the order of sundry bills, $397.03, dated June 9th, 1865, showing this specific amount included.

New Jersey Manufacturing Company, $120, quilts. This item appears in the cash book under date of June 1st, 1865, folio 26.

1755 I produce the original voucher, being receipt of the New Jersey Manufacturing Company, dated May 31st, 1865, and stub of check No. 684 for sundry bills, $225, showing this specific amount included.

Charles Lafferty, $20 for hauling. This item appears in the cash book under date of June 1st, 1865, folio 26.

I produce the original voucher, being receipt of Charles Lafferty for $20, dated March 31st, 1865, for this specific item.

I produce stub of check No. 684 for sundry bill-, $225, showing this specific amount included.

The next item on the ledger, folio 4, is a charge of $8,000, which includes the following items:—

Bolton, Dykeman & Co., $5,000 on account of new cars Nos. 59 and 60. This item appears in the cash book under date of May 30th, 1865, folio 25.

I find no voucher for this item, but produce stub of check No. 93, Citizens' Bank of Pittsburgh, to the order of Bolton, Dykeman & Co., $5,000 on account of cars Nos. 59 and 60, dated May 30th, 1865.

Bolton, Dykeman & Co., $3,000 on account of cars Nos. 57 and 58. This item appears in the cash book under date of May 23d, 1865, folio 25.

I produce the original voucher, being receipt of Bolton, Dykeman & Co. for $3,000, dated May 23d, 1865, for this specific item, indorsed to be for equipment.

I produce stub of check No. 92, Citizens' Bank of Pittsburgh, to the order of Bolton, Dykeman & Co. for $3,000, balance of cars 57 and 58, dated May 23d, 1865.

The next item on the ledger, folio 4, is a charge $169.04, as follows:—

Bolton, Dykeman & Co., $169.04, extra work on cars Nos. 43 and 46. This item appears in the cash book under date of May 16th, 1865, folio 25.

I produce the original voucher, being receipt of Bolton, Dykeman & Co. for $169.04, dated May 16th, 1865, for this specific item, indorsed to be for equipment.

1756 I produce stub of check No. 90 to the order of Bolton, Dykeman & Co. for $2,479.87, dated May 16th, 1865, which includes this specific amount.

The next item on the ledger, folio 4, is a charge of $177.60, which includes the following items:—

New Jersey Manufacturing Company, $144 for quilts. This item appears in the cash book under date of May 1st, 1865, folio 25.

I produce the original voucher, being receipt of New Jersey Manufacturing Company for $144, dated May 8th, 1865, indorsed to be for equipment.

I produce stub of check No. 529 for sundry bills, $208.60, dated May 12th, 1865, and showing this specific amount included.

Wilhelm & Neumann, $33.60 for comb and brush cases. This item appears in the cash book under date of May 12th, 1865, folio 25.

I produce the original voucher, being receipt of Wilhelm & Neumann for $33.60, dated May 8th, 1865, for this specific item.

I produce stub of check No. 529 for sundry bills, $208.60, dated May 12th, 186–, showing this specific amount included.

The next item on the ledger, folio 5, is a charge of $270, as follows:—

William Turner, $270 for cotton laps. This item appears in the cash book under date of May 20th, 1865, folio 25.

I produce the original voucher, being receipt of William Turner for $270, dated May 13th, 1865, for this specific item, indorsed to be for equipment.

I produce stub of check No. 563, Girard, to the order of William Turner for $270, dated May 20th, 1865.

The next item on the ledger, folio 4, is a charge of $726.35, which includes the following items:—

Doughten, Renshaw & Wilkins, $716.60, toweling and prints. This item appears in the cash book under date of May 8th, 1865, folio 25.

I produce the original voucher, being receipt of Doughten, Renshaw & Wilkins for $716.80, dated May 8th, 1865, for this specific item, indorsed to be for equipment.

1757 I produce stub of check No. 524, Girard, to the order of Doughten, Renshaw & Wilkins for $807.14, dated May 8th, 1865, this specific amount included.

C. Brintzinghoffer, $9.75 for brushes. This item appears in the cash book under date of May 1st, 1865, folio 25.

I produce the original voucher, being the receipt of C. Brintzinghoffer for $9.75, dated March 3d, 1865, for this specific item.

I produce stub of check No. 521, Girard, for sundry bills, $162.51, dated May 1st, 1865, showing this specific amount included.

The next item on the ledger, folio 4, is a charge of $3,400, as follows:—

Bolton, Dykeman & Co., $3,400, balance of cars Nos. 55 and 56. This item appears in the cash book under date of April 25th, 1865, folio 24.

I produce the original voucher, being receipt of Bolton, Dykeman & Co. for $3,400, dated April 25th, 1865, for this specific item, indorsed to be for equipment.

I produce stub of check No. 404 to the order of Bolton, Dykeman & Co., $3,400, balance of cars Nos. 55 and 56, dated April 25th, 1865.

The next item on the ledger, folio 4, is a charge of $157, which includes the following items:—

R. L. Knight & Son, $94.50 for carpet. This item appears in the cash book under date of April 20th, 1865, folio 24.

I produce the original voucher, being receipt of R. L. Knight & Son for $94.50, dated April 20th, 1865, for this specific item.

I produce stub of check No. 403, sundry persons for repairs and equipment, $778.16, dated April 20th, 1865, this specific amount being included.

Joseph Blackwood, $62 50 for carpeting. This item appears in the cash book under date of April 20th, 1865, folio 24.

I produce the original voucher, being receipt of Joseph Blackwood for $62.50 for this specific item, dated April 20th, 1865.

1758 I produce stub of check No. 403, sundry persons, $778.16, dated April 20th, 1865, with this specific amount included.

The next item on the ledger, folio 4, is a charge of $10,000, as follows:—

Bolton, Dykeman & Co., $10,000 on account of cars Nos. 55 and 56. This item appears in the cash book under date of April 11th and 18th, 1865, folio 24.

I produce the original voucher, being receipt of Bolton, Dykeman & Co., $5,000, dated April 11th, 1865, and $5,000, dated April 16th, 1865, for this specific item.

I produce stub of check No. 85, Citizens' Bank of Pittsburgh to the order of Bolton, Dykeman & Co., $5,000 on account of cars Nos. 55 and 56, dated April 11th, 1865, and stub of check No. 400, Girard, to the order of Bolton, Dykeman & Co. for $5,000 on account of cars Nos. 55 and 56, dated April 18th, 1865.

The next item on the ledger, folio 4, is a charge, $15,085.55, as follows:—

The New Jersey Manufacturing Company, $72 for quilts. This item appears in the cash book under date of March 30th, 1865, folio 23.

I produce the original voucher, being receipt of the New Jersey Manufacturing Company for $72, dated March 29th, 1865, indorsed to be for equipment of cars Nos. 49 and 50.

I produce stub of check No. 279, Girard, to the order of the New Jersey Manufacturing Company for $72, dated March 30th, 1865.

The next item, Bolton, Dykeman & Co., $8,400, balance for cars Nos. 51 and 52. This item appears in the cash book under date of March 30th, 1865, folio 23.

I produce the original voucher, being receipt of Bolton, Dykeman & Co. for $8,400, dated March 30th, 1865.

I produce stub of check No. 278, Girard, to the order of Bolton, Dykeman & Co. for $8,400, balance of cars Nos. 51 and 52, dated March 30th, 1865.

Bolton, Dykeman & Co., $5,000 on account cars 51 and 52. This item appears in the cash book under date of March 23d, 1865, folio 23.

1759 I produce the original voucher, being receipt of Bolton, Dykeman & Co. for $5,000, dated March 23d, 1865.

I produce stub of check No. 274, Girard, to the order of Bolton, Dykeman & Co. for $2,500 on account of cars Nos. 51 and 52, dated March 23d, 1865, also stub of check No. 82, Citizens' Bank of Pittsburgh, to the order of Bolton, Dykeman & Co. for $2,500, dated March 23d, 1865.

Bolton, Dykeman & Co. $1,400 on account of cars Nos. 49 and 50. This item appears in the cash book under date of March 18th, 1865, folio 23.

I produce the original voucher, being receipt of Bolton, Dykeman & Co. for $1,400, dated March 18th, 1865, for this specific item, and stub of check No. 81, Citizens' Bank of Pittsburgh, to the order of Bolton, Dykeman & Co., $1,400, dated March 18th, 1865.

W. H. Carryl, $213.35 for dry goods. This item appears in the cash book under date of March 17th, 1865, folio 23.

I produce the original voucher, being receipt of W. H. Carryl for $213.35, dated March 17th, 1865, for this specific item, indorsed to be for equipment.

I produce stub of check No. 269 to the order of W. H. Carryl, $493.35, dated March 17th, 1865, showing this specific amount included.

The next item on the ledger, folio 4, is a charge of $9,916.32, which includes the following items:—

C. E. Morgan & Co., $916.32 for muslins and prints. This item appears in the cash book under date of March 14th, 1865, folio 22.

I produce original voucher, being receipt of C. E. Morgan & Co. for $916.32, dated March 14th, 1865, for this specific item.

I produce stub of check No. 263 to the order of C. E. Morgan & Co. for $1,759.63, dated March 14th, 1865, showing this specific amount included.

Bolton, Dykeman & Co., $5,000 on account of cars Nos. 49 and 50. This item appears in the cash book under date of March 8th, 1865, folio 22.

1760 I produce the original voucher, being receipt of Bolton, Dykeman & Co. for $5,000, dated March 8th, 1865, for this specific item.

I produce stub of check No. 79, Citizens' Bank of Pittsburgh, to the order of Bolton, Dykeman & Co., $1,500, dated March 8th, 1865, account of cars Nos. 49 and 50.

Also stub of check No. 261, Girard, to the order of Bolton, Dykeman & Co. for $3,500, dated March 8th, 1865, account of cars Nos. 49 and 50.

Bolton, Dykeman & Co., $2,000 on account of cars 49 and 50. This item appears in the cash book under date of March 5th, 1865, folio 22.

I produce original voucher, being receipt of Bolton, Dykeman & Co. for $2,000, dated March 5th, 1865, for this specific item.

I produce stub of check No. 78, Citizens' Bank of Pittsburgh, to the order of Bolton, Dykeman & Co. for $2,000 on account of cars Nos. 49 and 50, dated March 5th, 1865.

Bolton, Dykeman & Co., $2,000 on account of cars Nos. 49 and 50. This item appears in the cash book under date of March 1st, 1865, folio 22.

I produce the original voucher, being receipt of Bolton, Dykeman & Co. for $2,000, dated March 1st, 1865, for this specific item.

I produce stub of check No. 77, Citizens' Bank of Pittsburgh, to the order of Bolton, Dykeman & Co. for $2,000, dated March 1st, 1865, on account of cars Nos. 49 and 50.

The next item on the ledger, folio 4, is a charge of $295.70, which includes the following items:—

Jennie Norman, $37.70 for sewing. This item appears in the cash book under date of February 28th, 1865, folio 22.

I produce original voucher, being receipt of Jennie Norman for $37.70, dated March 3d, 1865, for this specific item, indorsed by the superintendent to be for equipment.

I produce stub of check No. 259 to the order of R. Hays for $139.70, dated February 28th, 1865, showing this specific amount included.

1761 New Jersey Manufacturing Company, $33 for comforts This item appears in the cash book under date of February 28th, 1865, folio 22.

I produce the original voucher, being receipt of New Jersey Manufacturing Company for $33, dated March, 1865, for this specific item, stated therein to be for equipment.

I produce stub of check No. 259, Girard, to the order of R. Hays for $129.70, dated February 28th, 1865, showing this specific amount included.

Abraham Turner, $225 for cotton laps. This item appears in the cash book under date of February 28th, 1865, folio 22.

I produce the original voucher, being receipt of Abraham Turner for $225 for this specific item, indorsed to be for equipment, dated February 28th, 1865.

I produce stub of check No. 256, Girard, to the order of Abraham Turner for $225, dated February 28th, 1865.

The next item on the ledger, folio 4, is a charge of $11,610.56, which includes the following items:

Reeve L. Knight & Sons, $150.56 for carpet and mats. This item appears in the cash book under date of February 27th, 1865, folio 21.

I produce the original voucher, being receipt of Reeve L. Knight & Sons for $150.56, dated February 24th, 1865, for this specific item. I find no check for this item, but produce stub of check No. 142 to the order of G. R. Dykeman for $210.56, dated February 27th, 1865, showing this specific amount included.

Doughten, Renshaw & Wilkins, $60 for towels. This item appears in the cash book under date of February 27th, 1865, folio 21.

I produce stub of check No. 142, Girard, to the order of G. R. Dykeman for $210.56, dated February 27th, 1865, showing this specific amount included.

Bolton, Dykeman & Co., $3,000 on account of cars Nos. 49 and 50. This item appears in the cash book under date of February 20th, 1865, folio 21.

I produce the original voucher, being receipt of Bolton,
1762 Dykeman & Co. for $3,000, dated February 20th, 1865, for this specific item.

I produce stub of check No. 141, Girard, to the order of Bolton, Dykeman & Co. for $5,000, dated February 20th, 1865, showing this specific amount included.

Bolton, Dykeman & Co., $3,400 on account of cars Nos. 47 and 48. This item appears in the cash book under date of February 16th, 1865, folio 21.

I produce the original voucher, being receipt of Bolton, Dykeman & Co. for $2,000, dated February 20th, 1865, and $1,400 dated February 16th, 1865.

I produce stub of check No. 141, Girard, to the order of Bolton, Dykeman & Co. for $5,000, dated February 20th, 1865, showing the specific amount of $2,000 included.

I also produce stub of check No. 134, Girard, to the order of Bolton, Dykeman & Co. for $1,400, dated February 16th, 1865.

Bolton, Dykeman & Co., $5,000 for account of cars Nos. 47 and 48. This item appears in the cash book under date of February 3d, 1865, folio 21.

I produce the original voucher, being receipt of Bolton, Dykeman & Co. for $5,000, dated February 3d, 1865, for this specific item.

I produce stub of check No. 125, Girard, to the order of Bolton, Dykeman & Co., on account of cars Nos. 47 and 48, $5,000, dated February 3d, 1865.

The next item on the ledger, folio 4, is a charge of $5,000, as follows:

Bolton, Dykeman & Co., $5,000 on account cars 47 and 48. This item appears in the cash book under date of January 26th, 1865, folio 21.

I produce the original voucher, being receipt of Bolton, Dykeman & Co. for $5,000, dated January 26th, 1865, for this specific item.

I produce stubs of checks Nos. 36, Girard, to the order of Bolton, Dykeman & Co., on account cars Nos. 47 and 48, dated January
26th, 1865, $2,000, and No. 73, Citizens' Bank of Pittsburgh,
1763 to the order of Bolton, Dykeman & Co., account cars Nos. 47 and 48, $3,000, dated January 26th, 1865.

The next item on the ledger, folio 4, is a charge of $3,400, as follows:

Bolton, Dykeman & Co., $3,400 on account cars Nos. 45 and 46. This item appears in the cash book under date of January 17th and 20th, 1865, folio 20.

I produce the original voucher, being receipt of Bolton, Dykeman & Co. for $3,400, dated January 20th, 1865, for this specific item.

I produce stub of check No. 72, Citizens' Bank of Pittsburgh, to the order of Bolton, Dykeman & Co., balance of cars Nos. 45 and 46, $1,400, dated January 20th, 1865, also stub of check No. 33, Girard, to the order of Bolton, Dykeman & Co., account cars 45 and 46, $2,000, dated January 17th, 1865.

The next item on the ledger is a charge of $3,000, folio 4, as follows:

J. L. Howard & Co., $3,000 for two hundred pairs of blankets. This item appears in the cash book under date of January 16th, 1865, folio 20.

I produce the original voucher, being receipt of James L. Howard & Co. for $2,000, dated January 19th, 1865, for this specific item, indorsed to be for equipment.

I produce stub of check No. 32, Girard, to the order of J. L. Howard & Co., $3,000, dated January 16th, 1865.

The next item on the ledger, folio 4, is a charge of $5,000, as follows:

Bolton, Dykeman & Co., $5,000 on account of cars Nos. 45 and 46. This item appears in the cash book under date of January 11th and 13th, 1865, folio 20.

I produce the original voucher, being receipt of Bolton, Dykeman & Co. for $2,500, dated January 13th, 1865, and $2,500, dated January 11th, 1865.

I produce stubs of checks Nos. 25 and 26, Girard, to the order of Bolton, Dykeman & Co. account of cars Nos. 45 and 46, $2,500 each, dated January 13th and January 11th, 1865.

The next item on the ledger, folio 4, is a charge of $10,000, as follows:

1764 The Ohio and Mississippi Railroad Company, $10,000 for two cars Nos. 51 and 52. This item appears in the cash book under date of January 10th, 1865, folio 20.

I find no voucher for this item, but produce stub of check No. 70 of the Citizens' Bank of Pittsburgh, to the order of G. T. Firth, Ohio and Mississippi Railroad Company, for $7,000, dated January 9th, 1865, and stub No. 24, Girard, to the order of the Ohio and Mississippi Railroad Company on account of two cars, $3,000, dated January 10th, 1865.

The next item on the ledger, folio 4, is a charge of $10, as follows:

Charles Lafferty, $10 for hauling. This item appears in the cash book under date of December 31st, 1864, folio 20.

I produce original voucher, being receipt of Charles Lafferty for $10, dated December 31st, 1864, for this specific item. I find no check for this item.

The next item on the ledger, folio 4, is a charge of $46.95, as follows:

George Metz & Son, $7.35 for brushes. This item appears in the cash book under date of December 31st, 1864, folio 20.

I produce original voucher, being receipt of George Metz & Son for $7.35, dated December 27th, 1864, for this specific item, stated thereon to be for cars Nos. 33 and 34, indorsed to be for equipment.

I produce stub of check No. 23, Girard, to the order of G. R. Dykeman for $46.95, dated January 9th, 1865, showing this specific amount included.

W. H. Horstman & Son, $22 for binding. This item appears in the cash book under date of December 31st, 1864, folio 20.

I produce the original voucher, being receipt of W. H. Horstman & Son for $22, dated December 29th, 1864, for this specific item, indorsed to be for equipment.

I produce stub of check No. 23, Girard, to the order of G. R. Dykeman for $46.95, dated January 9th, 1865, showing this specific amount included.

Jennie Norman, $17.60, sewing. This item appears in the cash book under date of December 31st, 1864, folio 20.

1765 I produce the original voucher, being the receipt of Jennie Norman for $17.60, dated January 1st, 1865, for this specific amount.

I produce stub of check No. 23, Girard, to the order of G. R. Dykeman for $46.95, dated January 9th, 1865, showing this specific amount included.

The next item on the ledger, folio 4, is a charge of $5,000, as follows:—

Bolton, Dykeman & Co., $5,000 on account cars Nos. 45 and 46. This item appears in the cash book under date of December 30th, 1864, folio 19.

I produce the original voucher, being receipt of Bolton, Dykeman & Co. for $5,000, dated December 30th, 1864, for this specific item.

I produce stub of check No. 953, Girard, to the order of Bolton, Dykeman & Co. for $5,000, account cars Nos. 45 and 46, dated December 30th, 1864.

The next item on the ledger, folio 4, is a charge of $469.21, which includes the following items:—

James Ruggles, $159 for making quilts. This item appears in the cash book under date of December 21st, 1864, folio 19.

I produce the original voucher, being receipt of James Ruggles for $159, dated December 20th, 1864, for this specific item.

I produce stub of check No. 947, Girard, to the order of G. R. Dykeman for $469.21, dated December 21st, 1864, showing this specific amount included.

Charles E. Morgan & Co., $314.21 for dry goods. This item appears in the cash book under date of December 21st, 1864, folio 19.

I produce the original voucher, being receipt of Charles E. Morgan & Co. for $314.21, dated December 14th, 1864, for this specific item.

I produce stub of check No. 947, Girard, to the order of G. R. Dykeman for $469.21, dated December 21st, 1864, showing this specific amount included.

The next item on the ledger, folio 4, is a charge of $4,000, as follows:

1766 Bolton, Dykeman & Co., $4,000, balance for cars Nos. 43 and 44. This item appears in the cash book under date of December 16th, 1864, folio 19.

I produce the original voucher, being receipt of Bolton, Dyke-

man & Co. for $4,000, dated December 16th, 1864, for this specific item.

I produce stub of check No. 945, Girard, to the order of Bolton, Dykeman & Co., balance on cars Nos. 43 and 44, $4,000, dated December 16th, 1864.

The next item on the ledger, folio 4, is a charge of $29.15, which includes the following items:—

Charles Lafferty, $10 for hauling. This item appears in the cash book under date of November 30th, 1864, folio 19.

I produce the original voucher, being receipt of Charles Lafferty for $10, dated November 15th, 1864, for this specific item.

I produce stub of check No. 941, Girard, to the order of O. W. Childs for $198.50, dated November 30th, 1864, showing this specific amount included.

R. Hays, $12.05, expenses. This item appears in the cash book under date of November 30th, 1864, folio 19.

I produce the original voucher, being receipt of R. Hays for $12.05, dated December 7th, 1864, for this specific item, indorsed by the superintendent to be for equipment.

I produce stub of check of No. 940, Girard, to the order of G. R. Dykeman for $256.61, dated November 30th, 1864, showing this specific amount included.

C. Williams, $7.10 for brushes. This item appears in the cash book under date of November 30th, 1864, folio 19.

I produce the original voucher, being receipt of C. Williams for $7.10, dated November 22d, 1864, for this specific item, indorsed to be for equipment of cars Nos. 41 and 42, G. R. Dykeman, superintendent.

I produce stub of check No. 940, Girard, to the order of G. R. Dykeman for $256.61, dated November 30th, 1864, showing this specific amount included.

The next item on the ledger, folio 4, is a charge of $19,000, which includes the following items:—

1767 Bolton, Dykeman & Co., $5,000 on account of cars Nos. 43 and 44. This item appears in the cash book under date of November 26th, 1864, folio 18.

I produce original voucher, being receipt of Bolton, Dykeman & Co. for $5,000, account of cars 43 and 44, dated November 26th, 1864, for this specific item.

I also produce stub of check No. 61, Citizens' Bank of Pittsburgh, to the order of Bolton, Dykeman & Co., on account of new cars, $5,000, dated November 25th, 1864.

Bolton, Dykeman & Co., $5,000 on account of cars Nos. 43 and 44. This item appears in the cash book under date of November 21st, 1864, folio 18.

I produce the original voucher, being receipt of Bolton, Dykeman & Co. for $5,000, dated November 21st, 1864, for this specific item.

I produce stub of check No. 869, Girard, to the order of Bolton, Dykeman & Co. for $5,000, dated November 21st, 1864.

Bolton, Dykeman & Co., $1,500 on account of cars Nos. 41 and

42. This item appears in the cash book under date of November 29th, 1864, folio 18.

I produce the original voucher, being receipt of Bolton, Dykeman & Co. for $1,500, dated November 29th, 1864, for this specific item.

I produce stub of check No. 63, Citizens' Bank of Pittsburgh, to the order of Bolton, Dykeman & Co., balance of cars Nos. 41 and 42, $1,500, dated November 29th, 1864.

Bolton, Dykeman & Co., $2,500 on account of cars Nos. 41 and 42. This item appears in the cash book under date of November 14th, 1864, folio 18.

I produce the original voucher, being receipt of Bolton, Dykeman & Co. for $2,500, dated November 14th, 1864, for this specific item.

I produce stub of check No. 862, Girard, to the order of Bolton, Dykeman & Co. for $2,500, dated November 14th, 1864.

Bolton, Dykeman & Co., $5,000 on account of cars Nos. 41 and 42. This item appears in the cash book under date of November 8th, 1864, folio 18.

1768 I produce original voucher, being receipt of Bolton, Dykeman & Co. for $5,000, dated November 8th, 1864, for this specific item.

I produce stub of check No. 59, Citizens' Bank of Pittsburgh, to the order of Bolton, Dykeman & Co. for $5,000, dated November 8th, 1864.

The next item on the ledger, folio 4, is a charge of $96, as follows:—

Garretson, Brady & Co., $96 for toweling. This item appears in the cash book under date of November 8th, 1864, folio 18.

I produce the original voucher, being receipt of Garretson, Brady & Co. for $192.40, dated October 31st, 1864, for various items, including the item of $96, with a memorandum thereon that said item was for eqipment.

I produce stub of check No. 860, Girard, to the order of Garretson, Brady & Co. for $192.40, dated November 8th, 1864, showing this specific amount included.

The next item on the ledger, folio 4, is a charge of $1,078.54, as follows:—

Barcroft & Co., $1,078.54 for muslins and prints. This item appears in the cash book under date of November 2d, 1864, folio 18.

I produce the original voucher, being receipt of Barcroft & Co. for $1,078.54, dated November 2d, 1864, for this specific item.

I produce stub of check No. 854, Girard, to the order of Barcroft & Co. for $1,078.54, dated November 2d, 1864.

The next item on the ledger, folio 4, is a charge of $5,149.50, which includes the following items:—

Bolton, Dykeman & Co., $5,000 on account of cars Nos. 41 and 42. This item appears in the cash book under date of October 31st, 1864, folio 17.

I produce the original voucher, being receipt of Bolton, Dyke-

man & Co. for $5,000, dated October 31st, 1864, for this specific item.

I produce stub of check No. 58, Citizens' Bank of Pittsburgh, to the order of Bolton, Dykeman & Co. for $5,000, dated October 31st, 1864.

1769 James Spear $149.50 for stoves. This item appears in the cash book under date of October 31st, 1864, folio 17.

I produce the original voucher, being receipt of James Spear for $149.50, dated November, 1864, for this specific item. I find no check for this item or stub.

The next item on the ledger, folio 4, is a charge of $11,055, as follows:

The Philadelphia, Wilmington and Baltimore railroad, $55 for interest. This item appears in the cash book under date of October 29th, 1864, folio 17.

I produce the original receipt of the Philadelphia, Wilmington and Baltimore railroad for $55, dated November 16th, 1864, for this specific item. I find no check for this item.

Philadelphia, Wilmington and Baltimore railroad, $11,000 for cars Nos. 4 and 5. This item appears in the cash book under date of October 29th, 1864, folio 17.

I produce the original voucher, being receipt of the Philadelphia, Wilmington and Baltimore railroad for $11,000, dated October 29th, 1864, and stub of check No. 781, Girard, to the order of S. M. Felton, president, for $11,000, dated October 29th, 1864.

The next item on the ledger, folio 4, is a charge of $4,010, as follows:

Bolton, Dykeman & Co., $4,010, balance of cars 34 and 35. This item appears in the cash book under date of October 21st, 1864, folio 17.

I produce the original voucher, being receipt of Bolton, Dykeman & Co. for $4,010, dated October 21st, 1864, for this specific item.

I produce stub of check No. 779, Girard, to the order of Bolton, Dykeman & Co., balance of bill cars 34 and 35, $4,010, dated October 21st, 1864.

The next item on the ledger, folio 4, is a charge of $742.67, which includes the following items:

Merchants' Manufacturing Company, $192.45, quilting. This item appears in the cash book under date of October 14th, 1864, folio 17.

1770 I produce the original voucher, being receipt of the Merchants' Manufacturing Company for $342.45, dated October 14th, 1864, for various items, including the item of $192.45, stated thereon to be for equipment.

I produce stub of check No. 776, Girard, to the order of G. R. Dykeman for $441.86, dated October 14th, 1864, showing this specific amount included.

Abraham Turner, $550.22 for cotton laps. This item appears in the cash book under date of October 8th, 1864, folio 17.

I produce original voucher, being receipt of Abraham Turner for

$550.22, dated October 8th, 1864, for this specific item, indorsed by the superintendent to be for equipment.

I produce stub of check No. 774, Girard, to the order of William Turner for cotton laps, $550.22, dated October 8th, 1864.

The next item on the ledger, folio 4, is a charge of $21,761.76, as follows:

Ohio and Mississippi Railroad Company for three sleeping cars, $21,761.76. This item appears in the cash book under date of October 8th, 1864, folio 17.

I produce stub of check No. 772 for draft on New York sent W. D. Griswold, $12,861.76, dated October 8th, 1864. I find no check or stub for the balance of this item.

The next item on the ledger, folio 4, is a charge of 12,000 as follows:—

Cincinnati, Hamilton and Dayton railroad, $12,000 for two cars. This item appears in the cash book under date of October 8th, 1864, folio 16.

I produce original voucher, being receipt of the Cincinnati, Hamilton and Dayton railroad for $12,000, dated October 11th, 1864, for this specific item.

I produce stub of check No. 773, Girard, to the order of D. McLaren, $9,000, dated October 8th, 1864.

The next item on the ledger, folio 4, is a charge of $5,500, which includes the following items:—

For difference allowed on two hundred shares issued for the contract of the Ohio and Mississippi railroad, $2,500.

1771 For difference allowed on one hundred and twenty shares issued for the contract of the Cincinnati, Hamilton and Dayton railroad, $300.

These items appear in the cash book under date of October 8th, 1864, folio 16. I find no vouchers for these items.

The next item on the ledger, folio 3, is a charge of $10,000, as follows:

Bolton, Dykeman & Co., $10,000 on account of cars Nos. 34 and 35. This item appears in the cash book under date of September 30th, 1864, folio 16.

I produce the original voucher, being receipt of Bolton, Dykeman & Co. for $4,000, dated October 6th, 1864, and $6,000, dated September 29th, 1864, for this specific item.

I produce stub of check No. 771, Girard, to the order of Bolton, Dykeman & Co. on account of cars, $4,000, and stub of check No. 709, Girard, to the order of Bolton, Dykeman & Co. for $6,000, dated October 6th, 1864, and September 29th, 1864, respectively.

The next item on the ledger, folio 3, is a charge of $55, as follows:

Philadelphia, Wilmington and Baltimore Railroad Company, $55 for interest. This item appears in the cash book under date of September 30th, 1864, folio 16.

I produce the original voucher, being receipt of Philadelphia, Wilmington and Baltimore Railroad Company for $55, dated Octo-

r 13th, 1864, for this specific item. I find no check or stub for is item.

The next item on the ledger, folio 3, is a charge of $55, as fol-vs:

Philadelphia, Wilmington and Baltimore Railroad Company, $55 r interest. This item appears in the cash book under date of ıgust 31st, 1864, folio 15.

I produce the original voucher, being receipt of the Philadel-ia, Wilmington and Baltimore Railroad Company for $55, dated ptember 17th, 1864, for this specific item, indorsed to be for equipment. I find no check or stub for this item.

72 The next item on the ledger, folio 3, is a charge of $1,621.63, which includes the following items:

J. R. Bolton, balance on account of six cars and extra bills for e same, $1,565.45. This item appears in the cash book under date August 31st, 1864, folio 15.

I find no voucher for this item, but produce stub of check No. 6, Girard, to the order of J. R. Bolton for $2,226.99, dated Sep-mber 2d, 1864, which includes this specific amount.

Williams & Arnest, $56.18 for prints. This item appears in the sh book under date of August 31st, 1864, folio 15.

I produce the original voucher, being receipt of Williams & rnest for $56.18, dated August 23d, 1864, for this specific item.

I produce stub of check No. 632, Girard, to the order of O. W. ilds for $436.86, dated August 31st, 1864, showing this specific ıount included.

The next item on the ledger, folio 3, is a charge of $4,500, as llows:

J. R. Bolton, $4,500 on account of cars. This item appears in sh book under date of August 31st, 1864, folio 14.

I produce the original voucher, being receipt of Joseph R. Bolton r $2,500, dated August 16th, 1864, and for $2,000, dated August h, 1864.

I produce stub of check No. 47 to the order of J. R. Bolton, ,500, dated August 15th, 1864, and stub of check No. 45, Citizens' ank of Pittsburgh, to the order of J. R. Bolton, $2,000, dated ıgust 8th, 1864.

The next item on the ledger, folio 3, is a charge of $1,850.28, hich includes the following items:

J. Spear, $440 for stoves. This item appears in the cash book ıder date of August 31st, 1864, folio 14.

I produce the original voucher, being receipt of James Spear for 40 for heaters and ventilators of cars Y and Z, dated September h, 1864, for this specific item.

I produce stub of check No. 699, Girard, to the order of James ear for $290, dated August 31st, 1864, and stub of check No. 50, Citizens' Bank of Pittsburgh, to the order of Alexander Pit-73 cairn for $150, dated September 6th, 1864, with a memoran-dum that it is on account of James Spear's bill.

Mary A. Harvey, $23.04 for sewing. This item appears in the sh book under date of August 31st, 1864, folio 14.

I produce the original voucher, being receipt of Mary A. Harvey for $23.04, dated August 20th, 1864, for this specific item.

I produce stub of check No. 698, Girard, to the order of C. R. Dykeman for $204.69, dated August 31st, 1864, showing this specific amount included.

C. Brintzinghoffer, $9.85 for brushes. This item appears in the cash book under date of August 31st, 1864, folio 14.

I produce the original voucher, being receipt of C. Brintzinghoffer for $9.85, dated August 20th, 1864, for this specific item, indorsed for equipment of cars Y and Z.

I produce stub of check No. 698 to the order of C. R. Dykeman for $204.69, dated August 31st, 1864, showing this specific amount included.

Joseph Blackwood, $171.80 for carpeting. This item appears in the cash book under date of August 31st, 1864, folio 14.

I produce the original voucher, being receipt of Joseph Blackwood for $171.80, dated September 5th, 1864, for this specific item.

I produce stub of check No. 698, Girard, to the order G. R. Dykeman for $204.69, dated August 31st, 1864, showing this specific amount included.

Charles L. Sharpless, $74.80, toweling. This item appears in the cash book under date of August 23d, 1864, folio 14.

I produce original voucher, being receipt of Charles L. Sharpless for $74.80, dated August 8th, 1864, for this specific item.

I produce stub of check No. 628, Girard, to the order of C. L. Sharpless for $74.80, dated —— —, 1864.

George Foelker, $320, laps. This item appears in the cash book under date of August 23d, 1864.

I produce the original voucher, being receipt of George Foelker for $480, dated August 23d, 1864, for various items, including the item of $320, indorsed to be for equipment.

1774 I produce stub of check No. 627, Girard, to the order of George Foelker for $480, dated August 23d, 1864.

Charles E. Morgan & Co., $810.79 for muslins and prints. This item appears in the cash book under date of August 9th, 1864, folio 14.

I produce the original voucher, being receipt of Charles E. Morgan & Co. for $810.79, dated August 9th, 1864, for this specific item, indorsed to be for equipment.

I produce stub of check No. 623, Girard, to the order of C. E. Morgan & Co. for $1,137.82, dated August 9th, 1864, showing this specific amount included.

The next item on the ledger, folio 3, is a charge of $87, which includes the following items:

Philadelphia, Wilmington and Baltimore railroad, $55 for interest. This item appears in the cash book under date of July 30th, 1864.

I produce original voucher, being receipt of the Philadelphia, Wilmington and Baltimore railroad for $55, dated August 8th, 1864, for this specific item. I find no check for this item.

ames Spear, $32, for spittoons. This item appears in the cash
k under date of July 30th, 1864, folio 13.
produce the original voucher, being receipt of James Spear for
, dated July 30th, 1864, for this specific item, indorsed to be for
ipment of cars X, Y, Z. I find no check for this item.
The next item on the ledger, folio 3, is a charge of $607.80,
ich includes the following items:
. R. Dykeman, $85.20, payments in June. This item appears
he cash book under date of June 30th, 1864, folio 13. I find no
cher for this item.
Eli Hess, $71.60 for washstands. This item appears in the cash
k under date of June 30th, 1864, folio 13.
produce the original voucher, being receipt of Eli Hess for $71.60,
ed June 30th, 1864, for this specific item, indorsed to be for equip-
nt. I find no check for this item.
Philadelphia, Wilmington and Baltimore Railroad Com-
5 pany, $55 for interest. This item appears in the cash book
under date of June 30th, 1864, folio 13.
produce the original voucher, being receipt of the Philadelphia,
lmington and Baltimore Railroad Company for $55, dated June
h, 1864, for this specific item.
produce stub of check No. 556, Girard, to the order of G. R.
keman for $1,326.50, dated July 7th, 1864, showing this specific
ount included.
Henry Hamer, $396 for coverlids. This item appears in the cash
k under date of June 30th, 1864, folio 13.
produce original voucher, being receipt of Henry Hamer for
6, dated June 30th, 1864, for this specific item.
produce stub of check No. 36, Citizens' Bank of Pittsburgh, to
order of G. R. Dykeman for bill of H. Hamer, $396, dated
ne 30th, 1864.
The next item on the ledger, folio 3, is a charge of $1,222, as
lows:
James L. Howard & Co., $1,222 for blankets. This item appears
the cash book under date of June 15th, 1864, folio 12.
I produce original voucher, being receipt of James L. Howard &
for $1,222, dated June 16th, 1864, for this specific item.
I produce stub of check No. 491, Girard, to the order of J. L.
ward & Co. for $1,222, dated June 15th, 1864.
The next item on the ledger, folio 3, is a charge of $5,000, as fol-
vs:
J. R. Bolton, $5,000 on account cars. This item appears in the
h book under date of June 15th, 1864, folio 12.
I produce the original voucher, being receipt of Joseph R. Bolton
$5,000, dated June 13th, 1864, for this specific item.
I produce stubs of checks as follows: No. 32, Citizens' Bank of
ttsburgh, to the order of J. R. Bolton for $2,000, dated June 13th,
64; No. 33, Citizens' Bank of Pittsburgh, to the order of J. R.
lton, dated June 14th, 1864, for $2,000; and No. 489, Girard, to
order of J. R. Bolton for $1,000, dated June 14th, 1864.

1776 The next item on the ledger, folio 3, is a charge of $730.01, which includes the following items:

Charles Lafferty, $32 for hauling. This item appears in the cash book under date of June 30th, 1864, folio 12.

I produce the original voucher, being receipt of Charles Lafferty for $32, dated May 31st, 1864.

I produce stub of check No. 557, Girard, to the order of sundry bills, $129.88, dated July 7th, 1864, showing this specific amount included.

Charles Mulliken, $118.45 for marble slabs and basins. This item appears in the cash book under date of June 16th, 1864, folio 12.

I produce the original voucher, being receipt of Charles Mulliken for $118.45, dated June 9th, 1864, for this specific item, indorsed to be for equipment.

I produce stub of check No. 494, Girard, to the order of G. R. Dykeman for $505.45, dated June 16th, 1864, and showing this specific amount included.

Henry Hamer, $387 for coverlids. This item appears in the cash book under date of June 16th, 1864, folio 12.

I produce the original voucher, being receipt of Henry Hamer for $387, dated June 9th, 1864, for this specific item, indorsed to be for equipment of cars W and X.

I produce stub of check No. 494, Girard, to the order of G. R. Dykeman for $505.45, dated June 16th, 1864, showing this specific item included.

Mary A. Harvey, $20.40 sewing. This item appears in the cash book under date of June 9th, 1864, folio 12.

I produce the original voucher, being receipt of Mary A. Harvey for $20.40, dated May 31st, 1864, indorsed to be for equipment.

I produce stub of check No. 488, Girard, to the order of G. R. Dykeman for $192.56, dated June 9th, 1864, showing this specific amount included.

James Spear, $169.01 for ventilators and iron-work. This item appears in the cash book under date of June 9th, 1864, folio 12.

1777 I produce the original voucher, being receipt of James Spear for $169.01, dated June 2d, 1864, for this specific item, indorsed to be for equipment of cars W and X.

I produce the stub of check No. 488, Girard, to the order of G. R. Dykeman for $192.56, dated June 9th, 1864, and showing this specific amount included.

Charles Brintzinghoffer, $3.15 for brushes. This item appears in the cash book under date of June 9th, 1864, folio 12.

I produce the original voucher, being receipt of Charles Brintzinghoffer, $3.15, for this specific item, indorsed to be for cars W and X.

I produce stub of check No. 488, Girard, to the order of G. R. Dykeman for $192.56, dated June 9th, 1864, showing this specific amount included.

The next item on the ledger, folio 3, is a charge of $55 as follows:

Philadelphia, Wilmington and Baltimore railroad, $55 for in-

terest. This item appears in the cash book under date of May 31st, 1864, folio 12. I find no check or voucher for this item.

The next item on the ledger, folio 3, is a charge of $284.44, which includes the following items:

Williams & Arnest, $82.19 for muslin. This item appears in the cash book under date of May 31st, 1864, folio 11.

I produce the original voucher, being receipt of Williams & Arnest for $82.19, dated May 7th, 1864, for this specific item, stated therein to be for equipment of cars W and X.

I produce stub of check No. 432, Girard, to the order of G. R. Dykeman for $103.69, dated May 25th, 1864, showing this specific amount included.

Doughten, Renshaw & Wilkins, $50, towels. This item appears in the cash book under date of May 16th, 1864, folio 11.

I produce the original voucher, being receipt of Doughten, Renshaw & Wilkins for $101.75, dated May 12th, 1864, for various items, including the item of $50, indorsed to be for equipment.

I produce stub of check No. 427, Girard, to the order of Doughten, Renshaw & Wilkins for $101.75, which includes this specific item, dated May 16th, 1864.

1778 Reeve L. Knight & Son, $152.25, carpets. This item appears in the cash book under date of May 9th, 1864, folio 11.

I produce the original voucher, being receipt of Reeve L. Knight & Son for $199.50, dated May 7th, 1864, for various items, including the item of $152.25, indorsed to be for equipment.

I produce stub of check No. 425, Girard, to the order of R. L. Knight & Son for $199.50, dated May 9th, 1864.

The next item on the ledger, folio 3, is a charge of $15.53, which includes the following items:

C. Brintzinghoffer, $7.50 for brushes. This item appears in the cash book under date of April 29th, 1864, folio 10.

I produce the original voucher, being receipt of C. Brintzinghoffer for $7.50, dated April 8th, 1864, for this specific item.

I produce stub of check No. 376, Girard, to the order of J. F. Cottringer for $53.84, dated April 29th, 1864, showing this specific amount included.

O. W. Childs, $8.03, sundry items for equipment account. This item appears in the cash book under date of April 29th, 1864, folio 10. I find no voucher or check for this item.

The next item on the ledger, folio 3, is a charge of $5,600, as follows:

Joseph R. Bolton, $1,600, advance on cars. This item appears in the cash book under date of April 25th, 1864, folio 10.

I produce the original voucher, being receipt of Joseph R. Bolton for $1,600, dated April 23d, 1864.

I also produce stub of check No. 375, Girard, to the order of J. R. Bolton for $1,600, dated April 25th, 1864.

Joseph R. Bolton, $4,000, advance on cars. This item appears in the cash book under date of April 4th, 1864, folio 10.

I produce original voucher, being receipt of Joseph R. Bolton for $4,000, dated April 4th, 1864, for this specific item.

I produce stub of check No. 369, Girard, to the order of Joseph L. Bolton for $4,000, dated April 4th, 1864.

1779 The next item on the ledger, folio 3, is a charge of $100, as follows:

L. M. Shoemaker, trustee, account Baltimore and Ohio Railroad Company, $100. This item appears in the cash book under date of March 30th, 1864, folio 9. I find no voucher or check for this item.

The next item on the ledger, folio 3, is a charge of $1,097.65, which includes the following items:

Mrs. George J. Woodruff, $10.95 for sewing. This item appears in the cash book under date of March 24th, 1864, folio 9.

I produce the original voucher, being receipt of Mrs George J. Woodruff for $10.95, dated March 19th, 1864, for this specific item, indorsed to be for equipment.

I produce stub of check No. 322, Girard, to the order of bearer for $94.65, dated March 24th, 1864, and showing this specific amount included.

Mary A. Harvey, $8.70 for sewing. This item appears in the cash book under date of March 24th, 1864, folio 9.

I produce the original voucher, being receipt of Mary A. Harvey for $8.70, dated March 20th, 1864, for this specific item, indorsed by superintendent to be for equipment.

I produce stub of check No. 322, Girard, to the order of bearer for $94.65, dated March 24th, 1864, and showing this specific amount included.

James L. Howard & Co., $1,078 for blankets. This item appears in the cash book under date of March 24th, 1864, folio 9.

I produce the original voucher, being receipt of James L. Howard & Co. for $1,078, dated March 24th, 1864, for this specific item, indorsed to be for equipment.

I produce stub of check No. 321, Girard, to the order of James L. Howard & Co. for $1,078, dated March 24th, 1864.

The next item on the ledger is a charge of $970.28, as follows:

J. R. Bolton, $970.28 on account of cars. This item appears in the cash book under date of March 19th, 1864, folio 9.

1780 I produce the original voucher, being receipt of J. R. Bolton for $975.13, dated April 16th, 1864.

I produce stub of check No. 318, Girard, for J. R. Bolton's note, due April 13 | 16th, $975.13, discount $4.85, $970.28, dated March 19th, 1864.

The next item on the ledger, folio 3, is a charge of $287.26, which includes the following items:

James Spear, $182.50 for stoves. This item appears in the cash book under date of March 19th, 1864, folio 9. I find no voucher or check for this item.

James Spear, $14.40 for spittoons. This item appears in the cash book under date of March 19th, 1864, folio 9.

I produce the original voucher, being receipt of James Spear for $14.40, dated March 18th, 1864, for this specific item.

I produce stub of check No. 316, Girard, to the order of O. W.

Childs for $598.66, dated March 19th, 1864, showing this specific amount included.

Joseph Blackwood, $90.36 for carpetings and mats. This item appears in the cash book under date of March 19th, 1864, folio 9.

I produce original voucher, being receipt of Joseph Blackwood for $90.36, dated March 18th, 1864, for this specific item.

I also produce stub of check No. 316 to the order of O. W. Childs for $598.66, dated March 19th, 1864.

The next item on the ledger, folio 3, is a charge of $3,000, as follows:

J. R. Bolton, $3,000, advance on cars. This item appears in the cash book under date of March 5th, 1864, folio 9.

I produce the original voucher, being receipt of Joseph R. Bolton for $3,000, dated March 5th, 1864, for this specific item.

I produce stub of check No. 21, Citizens' Bank of Pittsburgh, to the order of Joseph R. Bolton for $3,000, dated March 5th, 1864.

The next item on the ledger, folio 3, is a charge of $3,402.25, as follows:

1781 Steubenville route, $3,402.25 for one sleeping car. This item appears in the cash book under date of February 29th, 1864, folio 8.

I produce voucher account Central Transportation Company in account with Alfred Gaither for building sleeping cars, &c., $3,402.25. I find no check for this item, it being settled for by stock transaction.

The next item on the ledger, folio 3, is a charge of $15,000, as follows:—

Contract with Steubenville route, $15,000. This item appears in the cash book under date of February 29th, 1864, folio 8.

For difference on six hundred shares of stock, being value paid for contract with the Steubenville route. I find no voucher for this item.

The next item on the ledger, folio 3, is a charge of $109.29, as follows:—

Jacob Fisher, $5, hauling trucks. This item appears in the cash book under date of February 29th, 1864, folio 8.

I produce the original voucher, being receipt of Jacob Fisher for $5, dated March 5th, 1864, for this specific item.

I produce stub of check No. 308, Girard, to the order of O. W. Childs for $243.84, dated February 29th, 1864, showing this specific amount included.

J. Butler, $30 for storing trucks. This item appears in the cash book under date of February 29th, 1864, folio 8.

I produce the original voucher, being receipt of J. Butler for $30, dated March 5th, 1864, for this specific item.

I produce stub of check No. 308, Girard, to the order of O. W. Childs for $243.84, dated February 29th, 1864, showing this specific amount included.

Williams & Arnest, $74.29 for muslins. This item appears in the cash book under date of February 29th, 1864, folio 8.

I produce the original voucher, being receipt of Williams & Arnest for $74.29, dated March 1st, 1864, for this specific item.

I produce stub of check No. 308, Girard, to the order of O. W. Childs for $243.84, dated February 29th, 1864, showing this specific amount included.

1782 The next item on the ledger, folio 3, is a charge of $2,500, as follows:—

J. R. Bolton, $2,500 on account two sleeping cars. This item appears in the cash book under date of January 26th, 1864, folio 7.

I produce the original voucher, being receipt of J. R. Bolton for $2,500, dated January 26th, 1864, for this specific item.

I produce stub of check No. 230, Girard, to the order of J. R. Bolton for $2,500, dated January 26th, 1864.

The next item on the ledger, folio 3, is a charge of $3,000, as follows:

J. R. Bolton, $3,000 on account two sleeping cars. This item appears in the cash book under date of January 4th, 1864, folio 7.

I produce the original voucher, being receipt of Joseph R. Bolton for $3,000, dated January 4th, 1864, for this specific item.

I produce stub of check No. 11, Citizens' Bank of Pittsburgh, to the order of Joseph R. Bolton for $3,000, dated January 4th, 1864.

The next item on the ledger, folio 3, is a charge of $23.50, as follows:—

George Harding for patents and contracts, $23.50. This item appears in the cash book under date of November 30th, 1863, folio 5.

I produce the original voucher, being receipt of O. W. Childs for $23.50, for this specific item.

The next item on the ledger, folio 3, is a charge of $1,286.30, as follows:—

Joseph R. Bolton, $1,286.30 on account two sleeping cars. This item appears in the cash book under date of November 27th, 1863, folio 5.

I produce the original voucher, being receipt of Joseph R. Bolton for $1,286.30, for this specific item.

I produce stub of check No. 147, Girard, to the order of J. R. Bolton for $1,286.30, dated November 27th, 1863.

The next item on the ledger, folio 3, is a charge of $35.13, as follows:—

1783 O. W. Childs, $35.13, sundry bills paid by him. This item appears in the cash book under date of October 28th, 1863, folio 4.

I produce the original voucher, being receipt of O. W. Childs for $145.56, dated October 28th, 1863, for various items, including the item of $35.13, indorsed to be for equipment.

I produce stub of check No. 113, Girard, to the order of O. W. Childs for $145.56, dated October 28th, 1863.

The next item on the ledger, folio 3, is a charge of $3.80 as follows:

W. C. Stevenson for bill of tools, $3.80. This item appears in the cash book under date of October 31st, 1863, folio 4. I find no voucher or check for this item.

The next item on the ledger, folio 3, is a charge of $3,408, as follows:

Baltimore and Ohio Railroad Company, $3,408 for four sets of trucks. This item appears in the cash book under date of September 1st, 1863, folio 3.

I produce the original voucher, being receipt of Baltimore and Ohio Railroad Company for $3,408, dated 19th September, 1863.

I produce the original draft of the Baltimore and Ohio Railroad Company for $3,408, dated Baltimore, September 19th, 1863, at sight, to J. F. Cottringer, treasurer Central Transportation Company, bearing the bank's stamp of payment.

I also produce stub of check No. 177, Girard, to the order of Baltimore and Ohio railroad for draft, $3,408, dated September 21st, 1863.

The next item on the ledger, folio 3, is a charge of $310, as follows:

Williams & Arnest, $310 for prints. This item appears in the cash book under date of September 21st, 1863, folio 3.

I produce the original voucher, being receipt of Williams & Arnest for $547.50 for various items, including the item of $310.

I also produce stub of check No. 78, Girard, to the order
1784 of Williams & Arnest, for $547.50, dated September 19th, 1863, including this specific item.

The next item on the ledger, folio 3, is a charge of $1,500, as follows:

Joseph R. Bolton, $1,500 on account of cars. This item appears in the cash book under date of September 12th, 1863, folio 3.

I produce the original voucher, being receipt of Joseph R. Bolton for $1,500, dated April 29th, 1863, contract. Receipt dated September 12th, 1863.

I produce stub of check No. 75, Girard, to the order of Joseph R. Bolton, account contract, April 29th, 1863, $1,500, dated September 12th, 1863.

The next item on the ledger, folio 3, is a charge of $150.90, as follows:

James Spear, $150.90 for car stoves. This item appears on the cash book under date of September 11th, folio 3.

I produce the original voucher, being receipt of James Spear for $150.90, dated September 1st, 1863.

I also produce stub of check No. 70, to the order of J. N. Bolton, $150.90, Spear's bill, dated September 11th, 1863.

The next item on the ledger, folio 3, is a charge of $563.37, as follows:

O. W. Childs, $1.08. This item appears in the cash book under date of August 31st, 1863, folio 2.

I produce the original voucher, being receipt of O. W. Childs for $142.90, dated September 8th, 1863, for various items, including the item of $1.08.

I also produce stub of check No. 69, Girard, to the order of O. W. Childs for $142.90, dated September 8th, 1863.

Mrs. George J. Woodruff, $16.32 for sewing. This item appears in the cash book under date of August 31st, 1863, folio 2.

I produce the original voucher, being receipt of Mrs. George J. Woodruff for $16.32, dated August 6th, 1863, for this specific item.

I also produce stub of check No. 69, Girard, to the order of O. W. Childs for $142.90, dated September 8th, 1863, with this specific amount included.

1785 Henry Hamer, $324 for coverlets. This item appears in the cash book under date of August 31st, 1863, folio 2.

I produce the original voucher, being receipt of Henry Hamer, dated July 3d, 1863, for this specific item.

I produce stub of check No. 46 to the order of G. R. Dykeman for $545.97, dated August 31st, 1863, including this specific item.

Field & Hardy, $50.74 for hardware. This item appears in the cash book under date of August 31st, folio 2.

I produce the original voucher, being receipt of Field & Hardy for $50.74, dated July 28th, 1863, for this specific item, indorsed to be chargeable to equipment.

I produce stub of check No. 46, Girard, to the order of G. R. Dykeman for $545.97, dated August 31st, 1863, with this specific amount included.

C. Brinsinghoffer, $4.35 for brushes. This item appears in the cash book under date of August 31st, folio 2.

I produce the original voucher, being receipt of C. Brinsinghoffer for $4.35, dated July 16th, 1863, for this specific item.

I produce stub of check No. 46, Girard, to the order of G. R. Dykeman for $545.97, dated August 31st, 1863, with this specific amount included.

Joseph Blackwood, $68.22 for carpets. This item appears in the cash book under date of August 31st, 1863, folio 2.

I produce the original voucher, being receipt of J. Blackwood for $68.22, dated August 14th, 1863, indorsed to be for equipment.

I produce stub of check No. 46, Girard, to the order of G. W. Dykeman for $545.97, dated August 31st, 1863, with this specific amount included.

James Spear, $38.40 for spittoons. This item appears in the cash book under date of August 31st, 1863, folio 2.

I produce the original voucher, being receipt of James Spear, dated August 22d, 1863, for this specific item, indorsed to be for equipment.

I produce stub of check No. 46, Girard, to the order of G. R. Dykeman for $545.97, dated August 31st, 1863, with this specific amount included.

1786 Williams & Arnest, $60.26 for dry goods. This item appears in the cash book under date of August 31st, 1863, folio 2.

I produce the original voucher, being receipt of Williams & Arnest for $60.26, dated July 29th, 1863, for this specific item, indorsed to be for equipment.

I produce stub of check No. 46, Girard, to the order of G. R. Dyke-

man for $545.97, dated August 31st, 1863, with this specific amount included.

The next entry on the ledger, folio 3, is a charge of $2,799.60, as follows:

J. R. Bolton, $2,799.60, contract for cars. This item appears in the cash book under date of August 18th, 1863, folio 2.

I produce the original voucher, being receipt of Joseph R. Bolton for $1,299.60, dated August 18th, 1863, and July 14th, 1863, for $1,500.

I produce stub of check No. 45, Girard, to the order of Joseph R. Bolton for $2,799.60, dated August 18th, 1863.

The next item on the ledger, folio 1, is a charge of $1,500, as follows:

Joseph R. Bolton, on account of new cars being built under contract, $1,500. This item appears in the cash book under date of July 31st, 1863, folio 1.

I produce the original voucher, being receipt of Joseph R. Bolton for $1,500, dated July 22d, 1863.

I produce the stub of check No. 1, Girard, to the order of Joseph R. Bolton for $1,500, dated July 22d, 1863.

The next item on the ledger, folio 3, is a charge of $271,223.46, as follows:

Cash book entry charged to equipment: "Expended for cars and contracts with the railroad company to this time, $271,223.46." This amount was taken from the old books. I have no vouchers representing this payment.

1787 MONDAY, *May 8th*, 1893—3 p. m.

Present: Samuel Bell, Esq., examiner; Messrs. Prichard and Wintersteen, counsel.

It is agreed that the testimony taken since the adjournment March 22d, 1893, including pages 28 to 295 inclusive, shall be considered as all taken at the meeting March 22d, 1893, and shall be subject to any objections to be hereafter noted by counsel for Pullman's Company.

Mr. Wintersteen objects to the testimony heretofore offered for the following, among other, reasons: He objects to the whole testimony as irrelevant, incompetent, and immaterial.

He also objects to any evidence of payments to transportation companies by the Central Transportation Company as irrelevant to the issue of the value of the material delivered by the Central Transportation Company to Pullman's Palace Car Company.

He also objects to any evidence as to the cost of equipment purchased by the Central Transportation Company unless it is specifically proven what equipment was bought and paid for, and that the same was delivered to the Pullman's Palace Car Company.

He also objects to any evidence of the cost of equipment as irrelevant to the question of the value thereof as of January, 1870.

He also objects to evidence of the cost of material prior to January, 1870, which upon its face is admittedly perishable as evidence of the value thereof as of January, 1870.

Examination of FRANK WECKERLY resumed.

By Mr. PRICHARD:

Q. Have you made a summary of the cost of the construction and equipment as shown by the various bills which you have testified to?

A. I have.

Q. Please state what is the total amount of the items which you have given of construction and equipment?

A. $1,357,247.

1788 Q. Does that include the amounts which are charged on the books to repairs?

A. No, sir.

Q. Is there a repair account in addition to that?

A. Yes, sir.

Q. Can you give the total of that?

A. Yes, sir; $341,191.99.

Q. Is this construction and equipment account kept in a separate account in the ledger; is there any ledger account of it?

A. Yes, sir.

Q. What is it called?

A. It is called "equipment and contracts account."

Q. How does the total of the debit side of that account agree with the total of the equipment as you have given it a few minutes ago?

A. The amount that I gave is $1,346.74 less than the debit side of the ledger account.

Q. What causes that difference?

A. That difference is caused by a charge of $1,346.74 made by ledger entry and credited to running expenses. I did not consider that that was at all chargeable to any construction and equipment.

Q. Are there on the credit side of that equipment and contracts ledger account any credits which might have been deducted from this balance?

A. Yes, sir.

Q. Give the aggregate amount of them?

A. The aggregate amount is $24,407.81.

Q. Please deduct that from the total of the cost that you have given and give me the net.

A. $1,332,839.19.

Q. Turn to the repair account of which you have spoken and please tell me whether any of that is within a year or two prior to 1870, the date of the lease?

A. Yes, sir; from the nine months ending January, 1870, from April, 1869, the charges to repair account amounted to
1789 $100,910.16. For the previous year, from April, of 1868, to April of 1869, our fiscal year running between those dates, the charge was $92,529.08. For the previous year. April, 1867, to April, 1868, the charge was $58,756.38. From April, 1866, to April, 1867, the charge was $43,242.76. From April, 1865, to April, 1866,

the charge was $27,194.36. From January, 1865, to April, 1865 (three months), the charge was $4,118.15. From January, 1864, to December, 1864, $11,324.65. From July, 1863, to December, 1863, $3,116.45.

Q. What does your book show with regard to the money paid by the Central Transportation Company for patents prior to the date of the lease?

A. $513,720.92.

Q. Please explain how that was paid; whether paid for purchases of patents or royalties, or in what way?

A. During the time of the running of the cars by the Central Transportation Company it was paid by a royalty to patent owners of a percentage of the gross receipts, with a final payment to the owners of a lump sum in liquidation of the further life of the patents.

Q. The royalties amounted to how much up to the date of that payment of the final sum?

A. $247,720.92.

Q. What was the final sum paid in lump?

A. The final sum was $266,000. The cash-book entry of that is as follows: Folio 134, October 30th, 1869, paid to patent owners for transfer of all their rights under the contract July 1st, 1863, as per new agreement dated September 30th, 1869, $266,000. That was done in view of the pending lease to Pullman's.

Q. At the time of the lease by the Central Transportation Company to Pullman's Palace Car Company, what was the capital of the Central Transportation Company as shown by their books?

A. $2,200,000.

Q. Can you give from their books the amount of gross receipts, expenses, dividends and surplus of the Central Transportation Company for the years preceding the making of that lease?

A. Yes, sir.

1790 Q. Please do so.

A. (Reading:) Statement of business of the Central Transportation Company up to time of lease to Pullman:

Period.	Gross receipts.	Running expenses.	Repairs, contingencies, &c.
July, '63, to Dec., '63.	$77,790 00	$34,175 39	$3,116 45
Jan., '64, to " '64.	176,654 20	32,316 68	11,324 65
" '65, to Apr., '65.	55,701 65	11,744 93	4,118 15
Apr., '65, to " '66.	299,700 49	63,306 98	27,194 36
" '66, to " '67.	310,157 16	70,468 11	43,242 76
" '67, to " '68.	345,785 49	77,968 18	58,756 38
" '68, to " '69.	422,172 12	87,087 88	92,529 08
" '69, to Jan., '70.	371,585 83	86,474 02	100,910 16
	$2,059,546 94	$463,542 17	$341,191 99

Period.	Patents.	Net receipts.	Dividend.	Undivided profits.
July, '63, to Dec., '63.....	$6,555 43	$33,942 73	$16,962 50	$16,980 23
Jan., '64, to " '64.....	26,417 96	106,594 91	57,894 96	48,699 95
" '65, to Apr., '65.....	7,967 71	31,870 86	21,218 50	10,652 36
Apr., '65, to " '66.....	41,839 86	167,359 29	120,718 79	46,640 50
" '66, to " '67.....	39,109 27	157,337 02	148,067 13	9,269 89
" '67, to " '68.. .	44,428 78	164,632 15	147,763 00	16,869 15
" '68, to " '69.....	49,278 10	193,277 06	163,248 50	30,028 56
" '69, to Jan., '70.	32,123 81	152,077 84	150,297 00	1,780 84
	266,000 00			
	$513,720 92	$1,007,091 86	$826,170 38	$180,921 48

Q. Are you familiar with the handwriting of J. F. Cottringer, the secretary of the Central Transportation Company in 1869 and 1870?

A. Yes, sir.

Q. Is that gentleman living or dead?

A. Dead.

Q. I show you book and ask you what is your knowledge of that book?

A. That is the first minute book of the Central Transportation Company.

Q. Found among the records of the company by you?

1791 A. Yes, sir; delivered to my predecessor, Mr. Opdyke, by Mr. Cottringer himself.

Q. I call your attention to the minutes of the meetings October 21st, 1867, January 20th, 1868, September 16th, 1869, and December 24th, 1869, and ask you to state whether those are in the handwriting of Mr. Cottringer?

A. They are.

(Mr. Prichard offered in evidence the minutes of the said meetings, containing the following entries:—

October 21st, 1867. "On motion of E. C. Knight, seconded by W. C. Stevenson, it was—

"Resolved, That a committee of five be and are hereby appointed with the power to act, in relation to an amicable settlement with G. M. Pullman and others, against whom suits by this company have been instituted for infringements of patents, and that E. C. Knight, W. C. Stevenson, G. C. Franciscus, J. Woodruff, A. Carnegie are appointed said committee."

January 20th, 1868. "E. C. Knight, chairman of the committee appointed (at a meeting of the board on 21st October, 1867) at the request of G. M. Pullman, 'to confer with him on the subject of an amicable settlement of our claims against him,' made a verbal report 'that the committee, after having made two visits to New York and having met Mr. Pullman, find that no arrangements could be made, except upon terms not satisfactory to your committee, and they therefore ask to be discharged from the further consideration of the

subject,' which, on motion of L. L. Houpt, seconded by G. R. Dykeman, was ordered, and that our attorneys be notified of the fact."

September 16th, 1869. "Resolved, That a committee of five (consisting of E. C. Knight, G. E. Franciscus, A. Carnegie, members of the board, and Thos. R. Davis and J. F. Cottringer, stockholders, be appointed to meet with a similar committee from the Pullman Car Company to arrange preliminaries for effecting a consolidation between the two companies, the action of said committees to be subject to the approval of the board."

1792 December 24th, 1869. "Mr. Carnegie, chairman of the committee appointed at meeting of September 16th to confer with the Pullman Palace Car Company committee on the subject of consolidation of the two companies, made the following report:—

"'Your committee begs leave to report that in accordance with the resolution of the board of September 16th and October 9th, Messrs. Davis, Cottringer and Carnegie, accompanied by Mr. Andrew Mehaffey (the commissioner appointed by your committee to investigate with Mr. G. L. Dunlap, commissioner appointed on the part of the committee of the Pullman Palace Car Company), proceeded to Chicago and there met the Pullman Palace Car Company's committee and their commissioner; it was proposed that before proceeding to business that the committees be authorized to give to each other an assurance that the award of the commissioners should be accepted as final. Your committee not feeling authorized to go as far requested time to receive your instructions; when you did give them the required authority Mr. Cottringer proceeded to Chicago, and in connection with Mr. Mehaffey began the necessary investigation into the affairs of the Pullman Palace Car Company; a second meeting was had there between the parties, and as we proceeded in our negotiations the idea of one or the other leasing one of the properties seemed desirable; for many reasons we were not favorably situated to lease the other; we therefore operated with a view to lease our property to the Pullman Car Company. Your committee believed it best to get whatever rental we could in the form of a guaranteed certificate, and after much negotiation we made a proposition, as follows (which has been accepted by the other party), and which we beg now to subscribe for such action as you may be pleased to take. The proposition is that "the Central Transportation Company is to receive an amount equal to twelve per cent. per annum guaranteed upon its present stock and upon ten per cent. additional."

"'It is further proposed to request that the certificates received, instead of bearing twelve per cent., should be based upon
1793 six per cent, which would, of course, double the nominal amount.

"'The subject is now submitted to you for final action.

"'(Signed) A. CARNEGIE, *Chairman.*
"'G. C. FRANCISCUS.
"'E. C. KNIGHT.
"'T. R. DAVIS.
"'J. F. COTTRINGER.'

"Mr. Carnegie also read a letter from Mr. Frederick Billings on the part of the Pullman Palace Car Company, accepting the terms of our proposition, and stating they were ready to formally execute the required papers.

"On motion of Mr. Bingham, seconded by Mr. Young, the report of the committee was approved of and committee continued, with authority to complete the arrangements and perfect the lease to the Pullman Palace Car Company on the basis of their report."

Adjourned to Monday, May 15th, 1893, 3 p. m.

MAY 15TH, 1893—3 p. m.

Present: Samuel Bell, Esq., the examiner; Messrs. Wintersteen and Prichard, of counsel.

DOLPHUS TORREY sworn.

By Mr. PRICHARD:

Q. What is your business?

A. I am connected with an asphalt company, who contract to supply asphalt for street-paving and other uses.

Q. Where is your place of business and residence at present?

A. The company I am employed with have their headquarters at 50 Wall street, New York. That is strictly my headquarters, but I have a western rendezvous at Detroit, where I keep my books
1794 and papers, and where I am as often as I can get there, so I would say my headquarters are in New York, with subordinate headquarters at Detroit.

Q. Were you at any time connected with the Central Transportation Company?

A. I was assistant general superintendent of the Central Transportation Company from December, 1868, until the property was transferred to the Pullman Palace Car Company.

Q. Then after that time what position did you hold?

A. I continued after that date to have control as division superintendent of the same territorial distribution of lines I had before; I was division superintendent of the Central division of the Pullman Palace Car Company.

Q. Down to what time?

A. I think until the 1st of May, 1875.

Q. Please state what other experience, if any, you have had in connection with railroads or transportation besides those two positions.

A. Probably about the 1st of January, 1855, or a little earlier, I entered the service of the Pennsylvania Railroad Company in its passenger department as a western agent. I remained with them until the 1st of January, 1860; then for about a year and a quarter I was eastern passenger agent for the Indiana Central railroad, with headquarters here in Philadelphia. That continued until I went into the army some time in April, 1861. I think after leaving the military service in 1865 I came into the general office of the Pennsylvania Railroad Company, in this city, and was employed under

Mr. Guinner, the general passenger agent, in the various capacities incident to that until I was nominated for this connection with the Central Transportation Company.

Q. At the time the lease was made by the Central Transportation Company to the Pullman's Palace Car Company in February, 1870, what tangible property did the Central Transportation Company have; I do not mean now, of course, in detail, but I mean speaking generally?

A. They had the equipment in the way of sleeping cars and other fittings; they had a laundry outfit at Pittsburgh, and such
1795 material in a small way as was incidentally accumulated as stocks in their store-rooms; I do not recall anything else now.

Q. And what property did they have of an intangible nature; did they have any patents or contracts?

A. They had contracts for operating their cars on a considerable mileage of road, probably five thousand or six thousand miles of railroad; that is speaking very roughly, however; I have made no figuring up to think about it; these contracts were, I think, about sixteen in number.

Q. And covered, generally speaking, what portion of the territory of the United States?

A. The contracts covered the line from New York to Washington which was made up of the four or five corporations in the route. They had their contracts with the Pennsylvania railroad and the Northern Central, which gave them the Pennsylvania Railroad lines between Pittsburgh and New York city by the Allentown line; the lines to Philadelphia and the lines to Baltimore as an eastern end. They had also the Philadelphia and Erie, which was a side line east connecting with the Northern and Western. Westward they had the Fort Wayne directly or as an axle line to Chicago, and Panhandle lines to Columbus, Indianapolis and Cincinnati, and Louisville and St. Louis, as important destinations; that was the most comprehensive and valuable line perhaps, I was going to say, in the country, anyway, very valuable. They had the Baltimore and Ohio railroad and its two branches at the west of the Ohio river, the Central Ohio, a line to Columbus and Cincinnati by that route, and the Marietta and Cincinnati route to Cincinnati. Then they had some several small lines in the West; that is, they had the Indianapolis and Cincinnati railroad; they had the Louisville, Cincinnati and Lexington road; they had the Hamilton and Dayton, and Dayton and Michigan roads. In the perfection of the Pennsylvania lines it enabled the lines, J. M. and I., Jefferson, Madison and Indianapolis, the Terre Haute and Indianapolis, and the Vandalia line, they were provided with an outlet for the other lines from New York over the Pennsylvania system. They had a
1796 contract also with the Bellefontaine, a railroad from Indianapolis to Crestline, and there connecting to Cleveland and Pittsburgh. Now, that arrangement of local lines in Cincinnati together with the routes from Cincinnati to Louisville, to St. Louis by way of Indianapolis, and they had also the Ohio and Mississippi

which gave them Cincinnati and Louisville by the Ohio and Mississippi lines; and they had by means of their I. C. and L., and the C. H. and D., and they had the lines to Toledo and Detroit, and Chicago from Cincinnati. In a general way the lines were so grouped as to be operated from a common point and still to cover important lines between large cities.

Q. What was the condition of the business of the Central Transportation in 1870, was it declining or growing?

(Object- to as irrelevant.)

A. I would say the business the latter part of 1869, and the first part of 1870, while the Pullman lease took effect as of the 1st of January, 1870, we had been operating for six weeks or two months before they came into actual control of the property. At that time the Pennsylvania system was just completing its arrangements for running through palace-car lines from New York to St. Louis and Louisville, and an increased demand existed from Chicago, so that the prospective requirements were for a very much increased business.

Q. Do you recollect whether the stock of the company was selling above or below par?

A. Well, I can only speak from general impressions.

Mr. WINTERSTEEN: That is objected to, if you have no knowledge of it.

A. I have; I did not buy or sell stock previous to that date; I have not that kind of knowledge, but I only was familiar with the stock reports in the daily papers, and my impressions—my recollections are that the stock fluctuated between fifty-six and sixty, say.

Q. The par was what?

A. Par was fifty; that was one hundred and ten to one hundred and twenty.

Q. Please state what, in your judgment, was the value of the tangible property of the Central Transportation Company in
1797 1870, the date of the lease, and in giving this estimate where there was property which, under the terms of the contracts, was to be kept up or renewed by the railroad companies, please take that fact into consideration; that is, I mean if under the contracts cars were to be kept in certain conditions by the roads, I would like the value based upon their being kept in such conditions.

(Question withdrawn for the present.)

Q. Did you some time about 1870 make any estimate of the value of the property of the Central Transportation Company for purposes of your own?

A. I did.

Q. Just state generally how you came to do that.

A. I had knowledge of the prospective consummation of the lease and the changes which were being made with arrangements in regard to the business, and I anticipated a very considerable advance in the market value of the stock, and I contemplated making some arrangements for buying upon a margin a block of the stocks, and

as a precaution to what I might be embarking in I exercised my best judgment in determining what element of value or risk there might be in such a proceeding. In that way I came to form a judgment of which I have a very clear recollection.

Q. Now, please state what that judgment was.

A. Well, it would be summed up that I considered the tangible property of the company at about fifty cents on the dollar of the total capital stock; that was about $1,100,000; am not under occasion to hold myself to any particularly careful calculation of figures, but that was a rough estimate which I made at the time with the knowledge I had.

Q. And the intangible property of the company—the contracts and patents, and so forth?

A. That, of course, was a very difficult thing to consider; I only estimated in my own mind that it was worth far more than the balance of the par value of the stock.

Q. Please give me your own opinion now as to what was the fair value of that property, tangible and intangible, at that time?

1798 A. In making a general estimate of the value of everything which was transferred by the contract, I remember that at that time the market value of money was about eight per cent., and eight per cent. paper was par value. The guarantee of the lines were eight per cent. on $3,300,000; therefore the inference was unquestionably to me that that was the minimum value, because parties had been willing to pay that for it. I then thought, and still think, the property was worth more than that by an amount which could only be determined after events had passed. The additional investment of money to fully equip the lines to increase and maintain their earning capacity would be a sum of money which, taking the market as it was at that date, was worth eight per cent. After such an investment was made the money paid eight per cent. set apart for an additional investment, and the surplus money represented a sum which calculated on eight per cent. would give the additional value of the property. That was the way I looked at it.

Q. From your knowledge of the property at that time and your experience in connection with railroads and transportation, what would have been the fair value of this property of the Central Transportation Company; of course I mean as a going concern, before the lease was consummated; I do not mean its value in consequence of the lease, but prior to the lease?

A. To the owners of the stock?

Q. To the owners of the stock; yes, sir.

A. The Central Transportation Company at a date previous to the lease did not own its own patents, and, as I understand your question, they would not be included in the thing.

Q. My recollection is that they had contracts which secured to them the use of those patents?

A. They paid a certain percentage of the gross revenues for the use of them.

Q. Then I want an answer based upon the condition of things at

that time; that is to say, they had arrangements by which they could use the patents, but they had to pay royalties for them?

A. Will you please put your question again?

1799 Q What I would like to know is, what, in your judgment, was a fair valuation of the property of the Central Transportation Company, tangible and intangible, including their contracts, to the Central Transportation Company itself, or to a purchaser who desired to purchase its property for the purpose of carrying on its business as a going concern?

A. Well, I think it would be over $3,000,000, based upon what was known to be its earning capacity, and what was known to be as the then pressing coming demand for business.

Cross-examined.

By Mr. WINTERSTEEN:

Q. What were your duties as assistant general superintendent of the Central Transportation Company from December, 1868, until the Pullman Company took charge?

A. To supervise the operation of its lines.

Q. Where were your headquarters?

A. In Pittsburgh, almost all the time; I think for a little while in Philadelphia, to begin with; but they were in Pittsburgh.

Q. You had under you, I suppose, a force of men?

A. Yes, sir; there was several assistant superintendents required, and then under those the various employés.

Q. I presume your duties did not require you to become acquainted with the amount or the specific value of the stock and equipment that was being carried, did they?

A. You could not help it, so interwoven the relations are. It is not like a railroad company, with a construction department, but you had all these things within your own organization. You would meet the men who had the blankets for sale, and see how cheap you could buy them from them; or go down to Wilhelm & Newman's and order some silver plate from them, and tell them to get an entirely new design in some different way. You would go to the shop and mark on the board or drawing how you would want a car changed or remodeled, so that, practically, you cover the whole field of operations.

1800 Q. Do I understand you to say that you knew personally in that period, say on January 1st, 1870, what material was on hand owned by the Central Transportation Company?

A. I know more about it than any other living person, for this reason: When I entered the service of the company there was no record of its cars in the way of a historical sketch in regard to the shops where they were built, where they had been remodeled, where they had been operated, or anything else. I compiled that record, which made me familiar with the circumstances in that direction. I furthermore took blank inventories of the equipment, such as was used for taking the stock of a car, and I had taken the invoice of all the details and material in every car, in every stock-room, in every

shop or place where the company had any. I had these papers bound substantially together, and transmitted them to the office of the Pullman Company in Chicago.

Q. When was that?

A. In 1870.

Q. You did not, however, in your transmitting that inventory to Chicago put a value or values upon these items, did you?

A. There was some kind of a rough estimate made about them. In connection with Mr. Robert Hayes, who was the most experienced assistant superintendent we had, there was something of that kind done, but what it was I do not know now. Of course it would be too much for memory.

Q. Now, on what basis of value did you fix the tangible property, to use Mr. Prichard's term, at $1,100,000, as of say January, 1870?

A. The basis of that calculation in a rough way was something like this. Of course you understand I am speaking from memory of a matter nearly twenty-five years old, and I must be allowed to do that. When cars were so depreciated that the expense of repairing would be very large, and particularly if their framework dimension was not of the size to suit them for the future requirements, there was an evolution in car-building, and while a car might have admitted of repairs, the higher grade of requirements would ask that you
1801 should make it ten feet longer or one foot wider, or in some other way change it, so that it was to the interest of the railroad and the sleeping car company to modernize as fully as possible whenever a car was to be overhauled too much. That led to an adjustment between the sleeping car company and the railroad companies, and about $7,000 was allowed for the—I may say the inferior, most inferior, possibly, if you made the loss large enough. I am not confining it to one particular car. Seven thousand dollars was the amount in settlement, possibly $6,000 in some cases, as the value of settling with the railroad for these cars. They took the old car and wrecked it for whatever they could get out of it. The trucks were usually good, and the sleeping car company took the bedding and made it over, put the hair into new mattesses, and things of that sort, and, therefore, in making an estimate of the kind I was making, why I simply said there is fifty or sixty cars at $7,000 apiece, would average up that if they were all run through the mill and disposed of. Then there was the additional sixty cars that were of a higher grade that had cost, some of them, a good many thousands of dollars, and I presume that these were put in at about $10,000 or $12,000 apiece, so that in that crude way of forming an opinion my knowledge was based upon the fact that the poorest cars were ordinarily settled for upon a basis of $6,000 or $7,000 apiece, and the other cars were worth $10,000 or $12,000 apiece.

Q. Then when you put the value of $1,100,000 you included everything in the way of stock on hand and material?

A. Oh, everything that could be referred to as a tangible asset and included the claim of the railroad company for renewal of the car and maintenance of it.

Q. You never have made an itemized list of values, of specific

items of material, and footed up the totals, the total values at $1,100,000, did you?

A. No, sir. As I said to you, I estimated these cars in a rough way, and the small equipment lying around in the way of everything from spittoons, brooms, brushes, blankets, pillows and
1802 mattresses, and all that kind of detail, appeared in the inventory of the whole equipment of the division which is in the hands of the Pullman Car Company.

Q. In coming to the conclusion that the property was worth $1,100,000, I suppose you considered as a chief factor, in coming to that conclusion, the cost of the items, did you not?

A. No; what the railroads were settling for it then.

Q. Were there any railroad companies that were buying your cars, or prepared to buy your cars, at prices for new cars?

A. If I understand you, of course we were not selling cars to railroads; we were adjusting the wrecking of the car, and they paid so much in settlement of all liability and took whatever they could get out of the car by wrecking it.

Q. Assuming that they wanted to take your car and do as they pleased with it?

A. Yes, sir.

Q. And what they pleased to do was to destroy?

A. In most cases; yes, sir.

Q. Now I am asking you whether there were any cars the wrecking value of which was the price of new cars?

A. Well, there might have been a case.

Q. Was not the fact that the price or the value of all your cars for wrecking purposes was about $6,000 or $7,000?

A. No, sir; you take a car like No. 65, which I happen to remember was rebuilt and destroyed not long afterwards, and I think destroyed in 1869, but it might have been 1870, I cannot remember dates now; they gave several thousand dollars more for that car because it was practically a new car; you understand there was no depreciation to charge off on it.

Q. Does not the question of the value of the car depend not only on the cost of the car but its modern condition, its condition for the purposes of modern transportation?

A. Not when it is settled for to wreck, because it is going to be wiped out of the service; then the question of its modernization has not anything to do with it; it is a question then of its fitness for service; there is the whole thing that settles it.

1803 Q. What I wanted to get at was the basis of your estimate of $7,000 for one class of cars and a much higher sum for other cars (you have practically answered the question) you have never taken the specific cars you had and considered their value?

A. I think that at the time I footed this matter up I grouped the cars, classified them on a memorandum, but that memorandum is not in existence. When I was asked to come as a witness I made a search to find out and was satisfied that it had been destroyed. It was nothing in a formal way, anyway; it would be simply a scratch

in a memorandum book, and it does not exist, if it was ever made, and how full it was I could not recall now.

Q. Did not the value of those cars depend largely upon a speculative future, namely, the future depended on your relations with other companies in the same line of business as your own?

A. Why I don't see how that can be construed that way. The value of the cars were most, as I estimated them, an estimate of their wrecking value with a settlement of the accumulated liabilities on account of their not having been fully and complet-ly maintained; that, of course, is not a relation prospective for the future.

Q. Do you mean to say there was a market value for such cars as the Central Transportation Company was using at that time?

A. Well, I should presume not, because the value was one purely of acknowledgment of unfulfilled requirements between the Central Transportation Company and the railroad company.

Q. Then the chief thing to determine the value was the rate at which railroad companies would be prepared to adjust?

A. The recognized liability on the part of the railroad company for what that car represented. There were cars that were new, just out of the shop, that could have been sold for, I presume, all of the cost, because the building of the cars had been going on for
1804 years, and some were new and some very old.

Q. You estimated the value of the intangible property at so much more, or rather the difference between the par value of the stock and $1,100,000; now, upon what basis of calculation, if any, did you fix that difference of value?

A. I think the notes to my answer cover that. Of course, I do not remember in what order these questions came to me before, but in leasing the company had been willing to take the property at an annual rental which represented eight per cent. or a par basis of $3,300,000 worth of stock, and that was a verification of what anybody could look at the leasing rights of the concern, patents and all; it would confirm, for instance, myself, say while the stock is really worth all there is of it, that is, it is worth $2,200,000, because $3,300,000 is paid for it.

Q. Then was not the way you came to the conclusion that the property was worth the difference between the par value of the stock and $1,100,000; that the Pullman Palace Car Company were willing to lease the Central Transportation Company's property and its franchises at eight per cent. upon a valuation of the company's property of $3,000,000, and because of the fact that they were willing to enter into a contract to pay a rental of eight per cent., you came to the conclusion that the intangible property must be worth something like that; is not that the idea?

A. Well, I perhaps can make myself a little clearer by going into some other matters that are not directly interested.

Q. That is a question to which I would like you to answer yes or no and then make your explanation.

A. I will say no. then, and I will say why the company required a great increase of equipment. I had been transferred from the Pennsylvania railroad to the Central Transportation Company at

the instigation of Colonel Thomas A. Scott, and I went to Colonel Scott and told him what this need was, and sounded him upon the idea whether I would get his support when I came in position to do so. I was expecting to become general superintendent in the matter of pledging $200,000 or $300,000 worth of bonds to build some cars, enlarge the equipment and start a special fund,
1805 so to speak, a betterment fund in the company, and if the Pullman Company had not leased the Central Transportation Company the Central Transportation Company could have made a great deal more money out of their property; I was in a position to believe that.

Q. Is that your whole answer?

A. That is the explanation of why I said no, not simply because the Pullman Company was going to lease it, but because of my own independent research and knowledge I became convinced that the property had great earning capacity and capacity for being greatly enlarged.

Q. Then your estimate of the value of the intangible property of the company was based upon what you hoped to establish in the future of earning capacity in connection with the company, was it not?

A. It was my own estimate of the earning capacity supported by the fact that another man in the business was willing to come in and put up that money for it.

Q. Is it not the fact that this value which you have given to the intangible property as of that time was dependent upon the increase of capital and upon a future situation resulting from the use of that capital?

A. Largely so.

Q. If the intangible property of the company had been sold as of, say, November, 1869, would it have brought anything like the figure which you have given as its value?

A. If properly offered it might have brought even more. You see it is one of those things you cannot tell about such property; there is, of course, a limited number of people to buy or to enter into operations that are going to take a $1,000,000, and operations which were dependent upon securing a transfer of the good-will of the Central Transportation Company with its railroad allies; and if any other party than the one who ultimately came in was prepared to have taken that property at that time they might have given much more.

Q. There was no other possible purchaser, was there, for the
1806 intangible property of the Central Transportation Company than the Pullman Company unless the Central Company had purchased the Pullman Company?

A. I should hesitate to say myself, because there were men with large financial operations, other men who have developed since, the Wagner Palace Car Company, they were possible purchasers, they did not consider it; there were people who organized other sleeping-car companies, they were possible purchasers, they did not consider it, because nobody considered there was going to be anything

done; these things are done under cover, quietly, and when it was decided to make a transfer of the property, or make an adjustment, or make some kind of an offer between the Pullman and Central Companies it was not published in the newspapers and nobody knew anything about it.

Q. Was not the situation something like this: that it was necessary not only for the development, but the continuance of a profit, to any large extent, to the Central Transportation Company that it should make some sort of arrangement with the Pullman Car Company?

A. I don't think so.

Q. In estimating the value of the intangible property at the figure which you have given to it as of that date, had you considered nothing else than what it had earned with that intangible property?

A. I necessarily have to consider what I knew at the time, that this enlargement of lines was going to give a great increase of business.

Q. The estimate you made at that time was based for the purpose of a stock operation?

A. My estimate of value was based because I thought of going in to see if I could make some money in the stock of the concern.

Q. I suppose you started with the equitable value of the stock, the market value of the stock, and then worked up the property so as to fit that, if possible?

A. I had no reason to; the only reason I had was to protect myself and see I did not go to work and buy something that was not any value to me if the worst should happen.

1807 Q. You put a value on the tangible property at $1,100,000; what was the value, in your own mind, of the intangible?

A. I answered that question very fully in my direct examination; I stated, as a minimum, it would be $1,100,000; the par value of the stock, as a maximum, might run to twice that much, or three times.

Q. Will you please give me your best judgment at this date the items that enter into this $1,100,000 of intangible property?

A. There were the patents.

Q. How much did you consider those as worth?

A. Of course, there had been a value put on the patents, because they had been sold and stock had been taken for them; the patents had been sold for $200,000, and something of stock between $200,000 or $300,000.

Q. Of your company's stock?

A. Of the Central Transportation Company's stock; there was some of it issued and merged into the patent ownership; the patent ownership had been on a royalty basis before.

Q. Then you put the patents as $200,000?

A. I put them at whatever they sold for; of course I could not say now; you understand I am remembering transactions of twenty-five years ago, and of which I have no minutes or data to carry my mind on. There were quite a number of contracts that were to run

I do not know how many years; they were to run the whole life of the Central Transportation Company, as long as its charter lasted.

Q. We have the value of $200,000; now we have to get up some value on the other items in order to make up the $1,100,000.

A. I make it in this way, did then and probably always would, that an opportunity to make money, an opportunity offered capital for an investment, the opportunity is worth that which the capital can earn over and above its legal interest, current interest. If the capital can be had for eight per cent. and the opportunity gives it a chance to earn sixteen per cent., then the opportunity is worth just as much as the capital, and on that basis you would find still higher values.

1808 Q. Then your idea was to capitalize the earnings and put the total property at the capitalized sum?

A. We all consider anything we have to sell would sell for what it earns us.

Q. Do I understand that the value of the whole property of the company, the valuation of the tangible property at $1,100,000, and an estimate on the intangible property, was based upon the capitalization of the prospective earning capacity of the company?

A. Not necessarily its prospective; that would be an element of doubt, but judging from the past it assuredly could continue to earn.

Q. Was it paying at that time eight per cent. upon its capital stock of $2,200,000?

A. I think it paid more than that; I could not say; that was a part I could not answer.

Q. But it is a fact that you based the value of the intangible property of the company upon the capitalization of earnings, a basis of eight per cent.?

A. Yes, sir; that would be the key-note of the situation; of course all the other incidentals would come into it, and that of course is its value to its stockholders, that is what it will earn.

Q. You made no estimate in detail of the items of that intangible property?

A. Well, I don't know; and you could not do that; it would be beyond human power to take those contracts and say this contract was worth so much, and the next one so much, because they are interlaced.

Q. You did not do it?

A. Oh, no; nobody could do that; they went as a whole.

Q. What patents were worth $200,000?

A. I do not know. The Central Transportation Company was paying, I believe, a per cent. upon their gross revenue; I do not know how much that gross revenue was; I have not a knowledge of its figures to say, but, of course, the patents were all lumped, I suppose, like groups of patents. There was a considerable

1809 number of them; some of them had no value and others had material value. The value of a patent, some one has got to know a great deal about it and be very fresh in mind. Then they had a value in two ways, you see; they had a value in giving a

right to conduct business, and they had a particular value in protecting that business from others who tried to encroach upon it.

Q. Do you know if there was a last account of stock taken by the Central Transportation Company before it went into the hands of the Pullman Company—a periodical account of stock for the purpose of showing the financial state of the company?

A. You mean of operating material and equipment?

Q. Yes; all their property.

A. It was never done until I did it, I don't think.

Q. When did you do it?

A. I did it about the time of the transfer and forwarded the papers to Chicago; I do not think it was ever done before.

Q. Did you put a value upon the items at any time?

A. I told you before that I had a recollection that there was an estimate made of its then value—you understand—by Mr. Robert Hayes and myself.

Q. But you did not do it periodically—did not do it semi-annually or annually before that time?

A. Before that time I do not think it had ever been done.

Q. And you did not do that officially, did you, as the official of the Central Company?

A. Yes, sir; well, I did it after the lease was consummated; I did it as the official of the Pullman Car Company; as superintendent of the Central division; got up all this data; took the inventory before the date, or about the date I was transferred to the Pullman Car Company.

Q. What was the purpose of taking an inventory without the values attached—what use would it be to the Pullman Car Company?

A. I thought the Pullman Company would like to know what it was. It was like that history of the cars I compiled. I had a certain habit of thoroughness in what I had to do. I knew there
1810 should be such a thing, and it was made, and whatever was said at the time that it was transmitted to the general superintendent's office in Chicago was accompanied by a letter, which can be found of record, and what I had to say about it.

Q. You made no inventory of the contracts, the intangible property, of course?

A. I had nothing to do with the contracts; no, had nothing to do with them in that way. Of course I knew what the contracts were, because some of them I had negotiated. One of them I negotiated.

Q. If those contracts had been sold separately they would not have brought anything like the figures you have given for them, would they?

A. I presume if sold separately it would have broken up. It would be like the Pennsylvania railroad selling its different sidings—would not bring near as much as if all put into a consolidated sale.

Redirect examination.

By Mr. PRICHARD:

Q. Mr. Wintersteen has asked you whether connection with the Pullman Company was necessary to the profitable existence of the Central Transportation Company. I would like to ask you whether the control of the contracts owned by the Central Transportation Company was of any special value to the Pullman Palace Car Company in 1870?

A. They were of value in two ways. They were of value for the revenue which might be derived from their direct operation, and they were of value of a certain intangible character of the prestige and dominance it gave Mr. Pullman in the sleeping-car business throughout the United States. Its contract with the Pennsylvania railroad and with the Central Transportation Company was the basis, I think, upon which other railroad company contracts, quite extensive, were negotiated, and put him at the head of the business; his prestige was unquestioned.

Q. To what point eastward did his lines extend prior to this lease?

1811 A. In the territory south of Chicago, I think, Mr. Pullman had operated a line. If he was not then doing so he had operated a local line to Columbus, Ohio, and one to Cincinnati. I do not think he ran south and east from there to any other point; he ran on the Michigan Central railroad to Detroit. Now I am unable to say about his connection with the Grank Trunk road; that is so much outside of the territory with which I was then familiar that I cannot say whether he ran that or not before he had his contract with the Michigan Central. Quite likely he may have gone probably as far east as Buffalo with what was then known as the Great Western Road of Canada, but he could not get over the New York Central on account of the Wagner interests; they were not in harmony. The Erie road was occupied by Bar & Sanderson, who owned a little sleeping-car company there, which Mr. Pullman afterwards bought, and the Central Transportation Company owned the lines of the Baltimore and Ohio and the Pennsylvania railroad, and he was blocked from reaching the seaboard, a matter which I understood he had greatly set his heart on and had failed to accomplish, and the only opening that came to him was through the lease of the Central Transportation Company.

(Counsel for the Central Transportation Company gives notice to the counsel for the Pullman Palace Car Company that he will apply tomorrow at ten o'clock in the circuit court for an extension of time for taking the testimony.)

Adjourned until Tuesday, May 16th, 1893, at 3 p. m.

TUESDAY, *May 16th*, 1893—3 p. m.

Present: Samuel Bell, Esq., examiner; Messrs. Prichard and Wintersteen, counsel.

Mr. Wintersteen has now had an opportunity of going over the

testimony heretofore taken, and desires to place of record some objections in addition to those heretofore entered.

1812 First. He objects to the entries on the books of the Central Transportation Company of February, 1870, and prior thereto, as not evidence of facts binding upon the cross-defendant, it not appearing that the Pullman Palace Car Company was a stockholder in said company at the times of the entries.

Second. He objects to any evidence of the profits of the Central Transportation Company prior to February, 1870, as irrelevant to the questions at issue in this cause.

F. WECKERLY recalled.

Cross-examined.

By Mr. WINTERSTEEN:

Q. You had no connection with the Central Transportation Company in 1870 and prior thereto, had you?

A. I had not.

Q. You had no personal knowledge of the facts to which you testified?

A. No, sir.

Q. All that you have done in the matter of testifying has been to place upon the record the facts as they appear to you upon the books of the Central Transportation Company, and upon the vouchers in the possession of the Central Transportation Company. Is that so?

A. That is so.

Q. You do not know, as a matter of fact, I presume, therefore, that the statements of facts which appear in the books and the statements in the vouchers which you have submitted are in accordance with the facts as they existed, do you?

A. No further than that I know that some of the vouchers, presumably all of them, are correct; that is, that they are the original vouchers.

Q. You know that they are, generally?

A. I know that they are, generally; yes.

Q. The only extent of your information is that they are generally?

A. Yes, sir.

1813 Q. And you know that they are, generally, from your familiarity, I suppose, with the handwriting of the parties who drew them?

A. Some of them; yes.

Q. Whose book entries are those that you refer to; referring to the ledger and the various other books referred to therewith?

A. Joseph F. Cottringer.

Q. He was connected with the company?

A. He was secretary and treasurer, and kept their accounts.

Q. On page 5 of the testimony you refer to folio 81 of the ledger. The first entry as to which you testified was an item showing a total of $108,756.63 to debit equipment and construction account,

and that is analyzed upon the books, as appears on page 5 of the testimony. What is the $20,300, if you know, with the date annexed thereto, March 31st, entitled "bonus"? What is that?

A. By authority of the stockholders, the board were authorized to sell a certain number of shares of the stock of the Central Transportation Company at an advance above the par value. That was done, and the difference between the par value and the price realized was credited to that account, originally, as a bonus.

Q. I find on the same date an entry of May 31st, 1866, Central Transportation Company stock, $50,000. What was that?

A. That was in payment for some cars, I think. I am uncertain about that.

Q. You do not know as to that?

A. No.

Q. I find "bonus" on the same date, $34,950.

A. That is similar to the other.

Q. Those entries were made to the debit of equipment and construction account, on December 31st, 1869, were they not?

A. Yes, sir.

Q. And the entries were made, were they not, for the purpose of correcting a prior entry or prior entries?

A. It is so stated.

1814 Q. At the time those entries were first made upon the books of the company they were entered to profit and loss account, were they not?

A. Yes, sir.

Q. They were first credited to equipment and construction account on May 31st, 1866, and then they were on the same day, on page 62, credited to profit and loss account, and under this designation: "Items credited by error to equipment account instead of this account."

A. Yes, sir.

Q. And then subsequently, on page 81, they were entered to the debit side of equipment and construction account, solely for the purpose of balancing the credit item entered to the credit of equipment and construction account on page 6 of the ledger on May 31st, 1866?

A. That is true.

Q. Then is it not the fact that those entries as to which you testified, aggregating $108,756.63, are purely ledger entries, and artificial?

A. They are purely ledger entries, but not artificial.

Q. They are ledger entries for the purposes of book-keeping, are they not, and correcting prior errors?

A. In my understanding of it they occurred in this way: Originally when the stock was sold at a bonus the proceeds of those sales were used for the purpose of construction and equipment. Mr. Cottringer credited them to construction and equipment, which made the actual cost of the construction and equipment account less than what it really was. He afterwards made the counter-entry to

make the construction and equipment account show what it really should as the cost.

Q. As a matter of fact, the items of cost of construction and equipment would appear in other forms, would they not?

A. Yes, sir. I was going on to say that therefore, while I have testified to this item as appearing on the books for the purpose of having the account perfectly straight, as I said to you before, it is not, in my opinion, a correct entry.

Q. This is not properly chargeable to equipment and construction?

1815 A. The whole sum should be less than that amount, $108,756.63. (The first item referred to by the witness on page 5 of the testimony.)

Q. The next item on page 5 is December 31st. 1869, ledger charge, $21,040.24. Have you a statement analyzing that charge?

A. Yes, sir.

Q. I wish you would let me see it.

(Witness hands counsel statement referred to.)

Q. This item, $21,040.24, is the aggregate of the items which immediately succeed in the testimony?

A. Yes, sir.

Q. And those items are taken from the cash book, I presume?

A. Yes, sir.

Q. The first item I see is James Spear & Co., $95.30, in which you refer to a voucher of $682.18, and on the back of the statement you say the indorsement there is that of Jonah Woodruff, general superintendent; that $95.30 is chargeable to equipment?

A. Yes, sir.

Q. I wish you would show me that voucher.

(Voucher produced.)

Q. In your testimony you do not state for what equipment this charge is made. As a matter of fact, do you know for what specific equipment that charge is made?

A. No. Some of the vouchers state; some of them do not.

Q. I show you the papers which you have furnished me, and ask, in looking over them, whether you can designate with which specific equipment that charge is connected?

A. It appears to be to the equipment of car 91.

Q. In whose handwriting is that which indicates that?

A. I do not know.

Q. The next item to which I wish to call your attention is Wilhelm & Neuman for $559.22, hardware materials, in connection with which you produce the original voucher, being a receipt for

1816 $3,038.76, and you state on the back of that voucher is indorsed the certificate of the superintendent that $559.52 is for equipment?

A. Yes, sir.

Q. What equipment?

A. That is one of the vouchers which I cannot separate.

Q. You do not know, and the papers do not show, what specific equipment that was?

A. No, sir.

Q. The next item is $107.20, H. Voight, for glass. Is there anything to show for what equipment that item was expended? Is it not the fact that very many of the vouchers do not designate the specific equipment for which the bills were incurred and money expended?

A. They do not designate the specific car in some cases; in many cases, I may say. That is probably, however, in the accounts of the equipment for the interior of the car—blankets and things of that kind—but for items of construction of the car itself, they are very generally noted in very many cases, although, as you get further back to the early days of the company, the accounts seem to have been kept much more loosely, and the vouchers, very likely, do not say what they are for.

Q. Can you state to what specific equipment that item of $107.50 was expended?

A. I cannot.

Q. I refer you to item on page 8 of the testimony, Noblett, Brown, Noblett & Co., $432 for carpets. Can you state for what specific equipment that expenditure was made?

A. Yes, sir. There is a memorandum on the voucher stating it is for equipment of car No. 98.

Q. In whose handwriting is that statement on the voucher?

A. I do not know.

Q. The next item to which I wish to call your attention is the first entry on page 14, referring to ledger, folio 81, the charge $84,779.91, giving the various items, Southern Transportation Company, $40,000 for eight cars. What is the balance of this item after deducting the $40,000? Is it made up of the bills immediately succeeding in the testimony?

A. Yes, sir.

1817 Q. Among those bills on page 15 I see a charge, Wilhelm & Neuman, $1,225.12 for hardware and metal-work, and on the voucher is the indorsement of the superintendent that it is for equipment. For what equipment?

A. $1,225.12 is for equipment of car No. 91.

Q. From what data do you get that?

A. From the voucher as rendered.

Q. On page 17 of the testimony you charge B. H. Shoemaker $134 for glass, and which the superintendent certifies, according to your statement, the $61.16 is for equipment. For what equipment?

A. Equipment of cars Nos. 117 and 119.

Q. On page 23 you produce the original check of the company to the order of Harlan-Hollingsworth Company, December 2d, 1869, for $10,229.68, which check you say appears to be for $229.68 more than the voucher?

A. Yes, sir.

Q. In making up your statement at the end of the last testimony, the total of which appears to be expended for construction

and equipment, was it the amount of the check or the amount of the voucher?

A. The amount of the voucher. I will say in explanation of several items of that kind which will appear that these people also did repair work for the Central Transportation Company, and sometimes the checks may represent items of repair which were settled for at the time, but which do not appear as a charge to construction account at all.

Q. On page 28 you state there appears upon folio 81 the charge of $43,388.78, including the value of items for Southern Transportation Company, for use of cars 2, 3, 9, 10, 11, 12, 13 and 14 during the month of September, $150 each, $1,200. For use of what cars is that credit asked?

A. Those cars were Southern Transportation Company cars in the service of the Central Transportation Company.

Q. Then they are rentals of cars paid to other companies, are they not—those items?

A. Yes, sir.

1818 Q. Did you include that item in the totals of equipment expenses?

A. Yes, sir.

Q. Why did you do that?

A. Because I was testifying to the books and vouchers as they appeared.

Q. I see throughout the testimony, running back through a number of years, similar entries to that of payments made from month to month to the Southern Transportation Company for the use of their cars.

A. Yes, sir.

Q. Does not that improperly appear in construction and equipment account?

A. In my opinion it improperly appears.

Q. Can you eliminate from the totals you have placed on the record, at page 298, the total amount of the items which you have given of construction and equipment account, and which aggregate $1,357,247; those items which have been paid to the Southern Transportation Company?

A. I can readily do that, but not offhand.

Q. Can you, at your convenience, eliminate those items?

A. Yes, sir.

Q. I forgot to ask you whether that first item as to which you testified on page 5, of one hundred and eight thousand odd dollars, appears in the totals also?

A. Yes; it appears in the totals as I have testified to them the other day.

Q. Then you will also eliminate that item at your convenience?

A. Yes, sir.

Q. I see on page 28 a charge item, Jennie Norman for sewing, $10. In connection with what equipment does that appear?

A. Equipment of cars 108 and 109.

Q. On page 29 an item, Charles Brintzinghoffer for brushes $54.12,

of which you have placed $34 to the equipment of certain cars. What is the difference?

A. The difference is $20.12.

1819 Q. To what car is that charged?

A. That is not charged to equipment account.

Q. Then that does not appear in the total?

A. It appears on the total of the voucher.

Q. But not on the total you have summarized in the testimony?

A. No, sir.

Q. Where the vouchers show that the specific material went into specific cars there is no evidence of the fact that it went into any cars excepting what appears on the voucher?

A. No, sir.

Q. On page 32 of the testimony there is an item, William Owens & Co., $11, silver-plated ware, as of October 30th, 1869. Do you know into what equipment that went?

A. Equipment of cars Nos. 104 and 105.

Q. On the same page of testimony, 32, appears an item of $3 for locks, Russel and Ervin Manufacturing Company. Into what equipment did that go?

A. For cars 104 and 105. I would like to call your attention to that, showing that Mr. Torrey had taken hold at that time.

Q. On page 33 there is an item of $12 for payment made to the Philadelphia, Wilmington and Baltimore Railroad Company, which is designated as freight on cars 114 and 115. What freight?

A. It is certified to be for equipment of cars 114 and 115.

Q. Do you know anything beyond what is certified?

A. It is the bill of the Philadelphia, Wilmington and Baltimore Railroad Company to the Central Transportation Company for transportation from Wilmington of two sleeping cars.

Q. Is that a proper charge to equipment account?

A. It seems to me that that would depend somewhat on whether the contract for the cars included their delivery at Philadelphia.

Q. You do not know whether it did or not?

A. I do not know. Ordinarily, I should say it would not be a charge to construction and equipment account.

1820 Q. I see on page 35, as the second item to which my attention is directed, a payment to the Southern Transportation Company for use of cars, $1,200, September 16th, 1869. That is in the same category as the other items to which reference is made as payment to that company?

A. Yes, sir.

Q. On page 36 of the testimony appears an item, $5,440 for blankets, being part of check for $6,898.06. With what equipment is that $5,440 connected?

A. That is for equipment of cars Nos. 85, 86, 87, 88, 89, 90, 93, 94, 95, 96, 106, 107, 110, 111, 114, 115, 81 & 82 and other cars. This is one of the cases where there is simply a lead-pencil memorandum of the party making the apportionment, and it is indorsed on the back by the superintendent $5,440 for equipment, and $1,458.06 is indorsed as being -or repairs, general use.

Q. Then you can designate as specific equipment all but how much?

A. $1,458.06.

Q. And the rest you cannot fasten on specific equipment?

A. Cannot fasten on specific cars.

Q. In making up your totals you do not, of course, include anything more than the items that enter into the larger vouchers when you paid large sums to specific persons?

A. No, sir.

Q. On page 43 is another payment to the Southern Transportation Company, $1,200 for use of certain cars during July, 1869, I presume. You have produced a check of the company on the Citizens' Bank of Pittsburgh for $760.20 in settlement of above bill, less credit of fifteen per cent., and receipts of Southern Transportation Company in July, 1869, $659.70. In making up your total, on page 298 of the testimony, did you include the $1,200 or the $760.20?

A. $1,200.

Q. Then the $1,200 would come off if those items were to be deducted from equipment?

A. Yes, sir.

1821 Q. There is an item on the same page of testimony, 43, of $12 to Philadelphia, Wilmington and Baltimore Railway Company for freight on cars 110 and 111. What freight?

A. Transportation from Wilmington to Philadelphia.

Q. Your company appears to have paid, monthly, to the Southern Transportation Company, from 1863 to '64, or at least 1865, up to January, 1870, for rentals of their cars, does it not?

A. The time I am unable to state.

Q. It was for a gradually increasing sum?

A. For some time.

Q. On page 69 of the testimony appears an item, Wilhelm & Neuman, $1,330.42 for hardware, which is a part of a voucher for $3,070.39, dated May 26th, 1869. For what equipment, if any, was that charge, $1,330.42?

A. It was marked for car 103.

Q. Marked by whom?

A. Indorsed by the superintendent.

Q. On page 70 is an item, James Howard & Co., May 27th, 1869, $1,250.70 for blankets. For what equipment was that?

A. For cars 89 and 90.

Q. On the same page is an item, Paton & Co., $467. For what equipment was that?

A. It does not state, but it is indorsed by the superintendent. The specific car is not stated.

Q. On page 71, Jackson & Sharp, $200 for remodeling, as of May 13th, 1869. For what equipment was that, if you know?

A. The bill reads: "To remodeling car No. 8, inside, as per contract."

Q. I find on page 73 an item of payment to the Philadelphia,

Wilmington and Baltimore for freight, $44.40; that, I suppose, was for transportation of the cars from Wilmington?

A. Yes, sir.

Q. For what cars?

A. The bills do not show.

Q. Then you do not know whether that was for transportation of cars from Wilmington or other material?

1822 A. Yes, sir; I know it was for transportation of cars?

Q. How do you know that?

A. Because the original freight bills of the Philadelphia, Wilmington and Baltimore Railroad Company are attached, showing them to be for transportation of cars.

Q. You do not know whether they are for transportation of new cars or whether they are for the transportation of other cars, do you?

A. No, sir.

Q. And do you not know whether that item is a proper charge to equipment account, do you, and there is nothing to show upon those vouchers, is there?

A. It is indorsed to be for equipment account by the superintendent, with a reservation as to part of the bill, the whole being $52.42, and $8 was for repairs account.

Q. Then that is the only thing to indicate?

A. The superintendent's indorsement; yes, sir.

Q. On page 74 there is a payment made to William Groves & Co., $63 for feathers for pillows. To what equipment was that charged?

A. Equipment of cars Nos. 91 and 92.

Q. On the same page, H. Voight, $70.95 for glass. To what equipment was that charged?

A. Car No. 103.

Q. On the next page, C. Brinsinghoffer, $50.78 for brushes. For what equipment was that?

A. Cars Nos. 89 and 90.

Q. On page 77 of the testimony, Jonah Woodruff, $6.33. For what equipment?

A. Car No. 88 and car No. 94.

Q. On page 79 of the testimony there appears to have been a payment made to the Pennsylvania Elastic Sponge Company, $360 for mattresses. For what equipment?

A. For car No. 80.

Q. Page 82, a payment made to James Spear & Co., $150.10 for stoves. For what equipment was that?

A. Cars Nos. 91 and 92.

1823 Q. On page 83, a payment to Doughten, Renshaw & Wilkins, $325.08 for ticking and sheeting. For what equipment was that?

A. Cars 87, 88, 91 and 92.

Q. On the same page a payment to Thomas Thompson's Sons & Co. for $360. For what equipment was that?

A. Cars Nos. 91 and 92.

Q. On page 86 of the testimony there is a payment to Harlan & Hollingsworth Company for $200 for remodeling. For what equipment?

A. Car No. 46.

Q. Is the whole of the item consumed in that?

A. Apparently; yes.

Q. On page 89 there is a payment to Leedom & Shaw of $11 for carpet. For what equipment?

A. Equipment of cars Nos. 83 and 84.

Q. On the same page there is a payment to Doughten, Renshaw & Wilkins, $204.05 for dry goods. For what equipment?

A. Cars 83 and 84.

Q. On page 90 there is a payment to Jennie Norman for sewing, $46.20. For what equipment?

A. I cannot determine the cars, but it is indorsed by the superintendent to be $46.20 for equipment.

Q. But you do not know whether it was for equipment of cars or for anything else, specifically owned by the company?

A. Yes, sir.

Q. Why?

A. Because the whole bill was for $145.90, of which $99.70 was charged to repairs and $46.20 to equipment, showing the superintendent had properly apportioned where the charge should be made.

Q. Does it show anything more than that the superintendent had apportioned it? It does not show he had properly apportioned it, does it?

A. No.

Q. But as to the charge having been made in connection
1824 with any specific piece of property of the company, there is nothing to show, is there?

A. No, sir.

Q. On page 92 of the testimony there is a payment, Wilhelm & Neuman, $402.75 for water-coolers, &c. To what equipment was that charged?

A. Equipment of cars 85 and 86.

Q. On page 93 there is a payment to Jackson & Sharp of $200 for remodeling. To what equipment is that?

A. Car No. 61.

Q. On page 95 a payment to the Pennsylvania Elastic Sponge Company, $741.30 for mattresses. For what equipment?

A. Equipment of cars Nos. 85 and 86.

Q. On page 97 there is a payment made to A. T. Stewart & Co. of $338.40. For what equipment?

A. Equipment of cars Nos. 85 and 86.

Q. On page 99 there is payment made to Jackson & Sharp for remodeling, $200. For what equipment?

A. Equipment of car No. 31.

Q. Is the whole of it consumed in that equipment?

A. Yes, sir.

Q. On page 100 there is a payment to Paton & Co., $422.50 for blankets. For what equipment?

A. Cars Nos. 85 and 86.

Q. On page 101 a payment to the Pennsylvania Railroad Company, $1,210.76 for remodeling. For what equipment was that?

A. I am unable to designate the cars separately.

Q. And you do not know whether it was for any specific article or articles owned by the Central Transportation Company, do you? There is nothing on the voucher to indicate it, is there?

A. Yes; I will designate it as being for remodeling cars Nos. 2, 1031, 1032, 77, 78, 30 and 21.

Q. What were cars 1031 and 1032?

A. I cannot state what cars 1031 and 1032 were, but the history of the cars of the Central Transportation Company in the
1825 possession of the Pullman Palace Car Company will show.

Q. Were cars 1031 and 1032 turned over to the Pullman Palace Car Company?

A. I cannot definitely say.

Q. Were not the cars that were turned over to the Pullman Palace Car Company Nos. 1 to 119, inclusive?

A. Yes, sir; but car S. B. No. 2 probably had another number when it was a Central Transportation Company car, and as had probably cars 1031 and 1032.

Q. But you do not know?

A. I do not know.

Q. All that appears on this voucher is that this item of expenditure was apportioned for equipment in connection with cars 1031 and 1032 and other cars?

A. Yes, sir.

Q. The amount apportioned for car 1031 was $164.64 and the amount to car 1032 was $172.90; is not that so?

A. Yes, sir.

Q. There is an item on page 102 of a payment to Jackson & Sharp, $200 for remodeling. For what equipment was that?

A. For equipment of car No. 26.

Q. On page 104 there is a payment to the Bellefontaine Railway Company of $400 for remodeling. For what equipment was that?

A. For remodeling car "M."

Q. What was car "M"? Do you know whether that was turned over to the Pullman Company?

A. Yes, sir. The original cars were lettered "A" to "Z," inclusive, and afterwards numbered.

Q. On page 105 there is a payment to Jackson & Sharp of $200 for remodeling. To what equipment was that charged?

A. For car No. 62.

Q. There is a payment on page 106 to William Groves & Co., $260.40 for feathers. For what equipment?

A. Equipment of cars Nos. 81 and 82.

1826 Q. On page 108 there is a payment to Jennie Norman for sewing, $65.20. For what equipment?

A. For cars 81 and 82.

Q. There is a payment on page 110 to the Philadelphia, Wil-

mington and Baltimore Railroad Company of $200 for remodeling. For what cars?

A. Car No. 9.

Q. On page 111 I see a payment made to Doughten, Renshaw & Wilkins, $325.40 for toweling?

A. Cars 81 and 82.

Q. An item, Wilhelm & Neuman for $1,370. What equipment?

A. Cars 79 and 80.

Q. On page 112 a payment to the Philadelphia, Wilmington and Baltimore Railroad Company, $12 for freight on cars 79 and 80; what freight?

A. From Wilmington.

Q. You do not know whether the contract provided for delivery at Wilmington or here?

A. I do not.

Q. On page 114 there is a payment to James Spear & Co. of $24 for spittoons. For what equipment?

A. Equipment of cars 79 and 80.

Q. On page 115 an item, Thomas Thompson's Sons & Co., $189, rep. What equipment?

A. Equipment of cars 79 and 80.

Q. There is a payment on page 116 to the Pennsylvania Railroad Company, $800 for remodeling. For what equipment?

A. Equipment of cars Nos. 30, 47, 49 and 58.

Q. On page 117 there is a payment made to Samuel Hadden for $22 for filling mattresses.

A. Cars 79 and 80.

Q. There is an item, Jennie Norman for sewing, $75. For what equipment?

A. Cars 79 and 80.

Q. C. Brinsinghoffer, $10.91 for brushes?

A. Cars 79 and 80.

1827 Q. On page 119, W. H. Horstmann & Son, $9.50 for binding. For what equipment?

A. Cars 79 and 80.

Q. What binding?

A. One gross of binding material.

Q. On page 121, a payment to the Philadelphia and Erie Railroad Company, $790.77 for remodeling?

A. Cars Nos. 1031 and 1032.

Q. Were those cars turned over to the Pullman Palace Car Company, or do you not know?

A. I can't say.

Q. On the same page, Mulliken & Feather, $7.50 for basins. For what equipment?

A. Cars 79 and 80.

Q. On page 123, a payment to the Bellefontaine Railway Company, $200 for remodeling.

A. Car No. 57.

Q. Page 125, a payment to the Baltimore and Ohio Railroad Company, $3,767.80 for trucks. What equipment?

A. Cars Nos. 8 and 9.

Q. Was the whole of that sum consumed for trucks for those cars?

A. More. There is a credit I see here on this account, leaving a balance of $3,767.80 for trucks.

Q. On page 127, James Fraas, $345 for mattresses. For what equipment?

A. Cars Nos. 8 and 9.

Q. The same page, Joseph Meyer & Son, $63, eight double carberths. For what equipment?

A. Car No. 45.

Q. A payment, page 129, to Wilhelm & Neuman, $2,400, hardware and silver plating. What equipment?

A. Cars Nos. 7, 33, 43, 56, 57, 59 and 35.

Q. Is the whole item consumed with those?

A. The whole item is consumed.

Q. Page 130, Jonah Woodruff, $31.50.

A. Car No. 36.

1828 Q. Page 132, a payment to Wilhelm & Neuman, $260.57 for hardware. What equipment?

A. Equipment of cars Nos. 27 and 47.

Q. Page 133, Jonah Woodruff, $43.57, and the same date and same page, W. H. Carryl, $314 for Mexican clothing. The same date Thomas Thompson Sons & Co., $59.30 for rep. What equipment?

A. Jonah Woodruff, equipment, $43.57, to car No. 9. Carryl, $314, cars Nos. 27, 44, and "Lima." Thomas Thompson Sons & Co., $59.33, "Lima."

Q. Page 134, James H. Denny, $30, lettering and striping?

A. No. 77.

Q. Wilhelm & Neuman, $995.64 for hardware?

A. Cars 27, 35, 55.

Q. B. H. Shoemaker, the same page, $308 for glass?

A. Cars Nos. 27, 47, 56 and 44.

Q. Page 135, William Groves & Co., $91.74, feathers?

A. Car No. 8.

Q. Page 136, Jonah Woodruff, $39 for carpets?

A. Car No. 8.

Q. Thomas Thompson Sons & Co., $286.87?

A. Cars Nos. 77 and 78.

Q. Doughten, Renshaw & Wilkins, the same page, $228.27 for dry goods?

A. Cars Nos. 77 and 78.

Q. Leedom & Shaw, next page, $56.47, carpets?

A. Cars Nos. 77 and 78.

Q. William Groves, same page, $192.56, feathers?

A. Cars Nos. 77 and 78.

Q. Page 138, a payment to Wilhelm & Neuman, hardware and silver plating $3,333.10?

A. Car No. 36.

Q. Page 140, Jennie Norman, sewing, $22.60?

A. Cars Nos. 77 and 78.

Q. Wilhelm & Neuman, same page, $91.74 for hardware?

A. I cannot state to what specific car that amount is chargeable.

1829 Q. Page 144, Jonah Woodruff, a payment of $8.32 for camp stools?

A. Car No. 75.

Q. Page 147, S. M. Atwell, sewing, $55.68.

A. Not stated specifically.

Q. You do not know and there is nothing to show?

A. I do not know and there is nothing to show, except the indorsement of the superintendent that a portion of the bill is chargeable to equipment.

Q. But to what equipment nobody knows, and whether it is equipment owned by the company nobody knows?

A. No, sir.

Q. Page 149, McFarland & Collins, $514.46 for carpets?

A. Equipment of cars 69 and 75.

Q. The same page, payment, Jonah Woodruff, $60 for spittoons.

A. Not stated specifically.

Q. You have the same answer to make, then, as to the absence of information as to the nature of equipment as to the last question but one?

A. Yes, sir. I would state that this particular case, the voucher of Jonah Woodruff for this whole amount, is accompanied by the original bills of the different parties from whom he bought these various articles, but it does not state on them to what specific car they are apportioned.

Q. Page 155, a payment to Jonah Woodruff, $271.30 for carving basins, &c. What equipment?

A. Car No. 75.

Adjourned to meet Friday, May 19th, 1893, at 2 o'clock p. m.

Present: The examiner (Colonel Bell), and Messrs. Prichard and Wintersteen, of counsel.

Cross-examination of Mr. WECKERLY continued.

By Mr. WINTERSTEEN:

Q. I find on page 157 of the testimony an entry, "H. Wacher, $66.50 for oil," appearing in the cash book under date of
1830 June 22d, 1867. For what equipment, if any, was that expenditure incurred?

A. For car No. 67.

Q. Answer also the same question as to an entry on page 161, Charles Dahlinges, $100 for extension beds, the date being June 7th, 1867.

A. Cars Nos. 11, 58, 12 and 5.

Q. Page 162, Pennsylvania Railroad Company, $1,546.14, remodeling cars, date May 20th, 1867?

A. No. 34, No. 70, No. 73 and No. 18.

Q. Same page, Abraham Turner, $90 for cotton laps?

A. Cars Nos. 69 and 75.

Q. Page 163, Doughten, Renshaw & Wilkins, $114.30, dry goods, date May 13th, 1867?

A. No. 69 and No. 32.

Q. Same page, Thomas Thompson's Sons & Co., $1,127.80 for carpet, hair, &c., same date?

A. I have no memorandum of the specific car, but it is indorsed and signed by the superintendent for equipment.

Q. I ask you only as to those cases concerning which there is no testimony in the direct examination as to the specific equipment for which the expenditures were made. Same page, W. H. Carryl, $64.40 for head linings?

A. Car No. 76.

Q. Page 164, B. H. Shoemaker, $827.70 for glass?

A. Car No. 76.

Q. Page 165, Jonah Woodruff, $233.60, bills for supplies, May 9th, 1867?

A. Car No. 65.

Q. Same page, Linda M. Shindle, $112.20, sewing?

A. No specific number of car.

Q. Page 166, direct testimony, Wilhelm & Neuman, $190.18, expenditure May 6th, 1867?

A. No specific number of car—that is, there is no specific car mentioned in which the equipment was made.

Q. I ask you more particularly with reference to its result, whether there is any specific character of equipment to which the specific article was applied?

1831 A. Oh, of course. This is a bill for hardware, silver-plated brackets, seat ornaments, rosettes, coat hooks, combs and racks.

Q. But you don't know, from the vouchers in the possession of the company, in what direction those specific articles went?

A. I don't know to what specific car they were applied.

Q. Nor whether or not they were applied to any car, do you?

A. No; certainly not.

Q. Page 167, Doughten, Renshaw & Wilkins, $411.81 for sheeting?

A. Cars No. 73 and 74.

Q. Page 168, Wilhelm & Neuman, $447.03, car materials.

A. Car No. 18.

Q. Same page, same parties, expenditure $243.22, car materials.

A. Cars Nos. 70, 73 and 74.

Q. Page 169, S. M. Atwell, $18, sewing, April 1st, 1867.

A. No specific car. It was for making one hundred sheets and two hundred and fifty pillow slips.

Q. Page 170, Pennsylvania Railroad Company, $169.12, labor and materials, March 28th, 1867?

A. Car No. 70.

Q. Same page, Linda M. Shindle, $110, sewing?

A. No specific car.

Q. Page 171, C. Brintzinghoffer, $11.90, brushes?
A. Cars Nos. 73 and 74.
Q. Abraham Turner, $90?
A. No specific car.
Q. Same page, same party, $108.60, cotton laps?
A. Cars Nos. 73 and 74.
Q. Page 172, Charles Lafferty, $10, hauling cars?
A. Cars Nos. 71 and 72.
Q. What was the nature of that hauling?
A. It was the hauling of cars from Bolton & Dykeman's factory to the Pennsylvania Railroad tracks.

1832 Q. You do not endeavor to charge the Pullman's Palace Car Company with that item as part of equipment, do you?
A. The total cost of a car would be a car on the tracks, as I understand it, and I suppose that was the reason why it was so charged at the time in construction account. As I would be making a charge myself in the light of business as conducted nowadays, it would depend on the bargains that were made.
Q. Page 175, Wilhelm & Neuman, $138.30 for hardware and lamps, February 28th, 1867?
A. Cars Nos. 69 and 70.
Q. Page 174, Lehman & Shaw, $29 for mats.
A. No specific car.
Q. Page 176, Charles Lafferty, $5, hauling?
A. No specific car.
Q. Page 178, Jonah Woodruff, $44, urns and ornaments?
A. No specific car.
Q. Page 179. Philadelphia, Wilmington and Baltimore Railroad Company, $845.29, materials and labor?
A. Cars Nos. 35 and 42.
Q. Same page, Jonah Woodruff, $299.62, hardware and carpet bills, January 1st, 1867?
A. No specific car.
Q. Page 180, Doughten, Renshaw & Wilkins, $709, sheetings and prints?
A. No specific car.
Q. Page 181, Mary A. Harvey, $24, sewing, January 2d, 1867?
A. Silver palace No. 70.
Q. Page 182, S. M. Atwell, $27.20 for sewing sheets?
A. No specific car.
Q. Same page, Linda M. Shindle, $66 for sewing?
A. No specific car.
Q. Page 183, Pittsburgh, Fort Wayne and Chicago Railroad Company, $756.10, labor and materials?
A. Car "Allegheny."
Q. Do you happen to know anything about the destination of that car?

1833 A. I do not, further than the history of cars in the possession of the Pullman Company shows where every one of these cars went, and I think you will find that also in the testimony of Mr. Goodman, who testified seriatim to almost every car.

Q. Page 184, Doughten, Renshaw & Wilkins, $729.64, sheeting?
A. No specific car.
Q. Same page, William Groves & Co., $119.71, feathers?
A. No specific car.
Q. Page 185, S. M. Atwell, $75.28 for sewing?
A. No specific car.
Q. Same page, Mary A. Harvey, $10.14 for sewing?
A. No specific car.
Q. Page 186, Jonah Woodruff, $100, head linings?
A. That is marked to J. C. & W. J. Brown for painting one head lining for new car at Altoona; further than that it is not stated.
Q. Same page, Bolton, Dykeman & Co., $93.31, materials?
A. Car No. 70.
Q. Page 187, Doughten, Renshaw & Wilkins, $67.25 for bill of sheeting?
A. Silver palace car No. 70.
Q. Page 190, S. M. Atwell, $24.56, sewing, November 1st, 1866?
A. No specific cars.
Q. Page 191, Jonah Woodruff, $698.25, bills of furnishings, November 7th, 1866?
A. No specific car.
Q. Page 192, Pennsylvania Railroad Company, $1,000, October 31st, 1866?
A. For that item I find check stub of check No. 204 on Citizens' Bank of Pittsburgh, dated October 30th, 1866, to E. H. Williams for repair bill, July and August, $1,998.14.
Q. You have no information as to what was the destination of that purchase?
A. No, sir; necessarily not.

1834 Q. I see in your direct testimony no notation that that was for equipment. You have no information from the books that it was for equipment?

A. Further than the entry in the cash book.
Q. To what effect is that?
A. No further than that it is charged to equipment in the cash book.
Q. Page 192, Bolton, Dykeman & Co., $923.15, toweling, checks and reps?
A. Equipment of car No. 70.
Q. Same page, B. H. Shoemaker, $106.80, glass?
A. No specific car.
Q. Page 194, Doughten, Renshaw & Wilkins, $95.57, ticking and duck?
A. Silver palace No. 2.
Q. Page 195, Wilhelm & Neumann, $250.87, hardware?
A. No specific car.
Q. Same page, James Spear, $2.50, registers?
A. Silver palace No. 3.
Q. Same page, Bolton, Dykeman & Co., $1,778.32, car-work?
A. Cars Nos. 63 and 66.
Q. Page 196, Wilhelm & Neumann, $399.42, hardware?

A. For car P, and for silver palace.
Q. Same page, Doughten, Renshaw & Wilkins, $508.80, sheetings?
A. No specific car.
Q. Page 187, James Spear, $20.75, spittoons?
A. No specific car.
Q. Page 197, Charles Lafferty, $4, hauling?
A. Car No. 31, from West Philadelphia to Baltimore depot.
Q. Is that all the voucher indicates?
A. That is all.
Q. Page 198, S. M. Atwell, $42.36, sewing?
A. No specific car.
Q. Page 198, Joseph Wood, Red Bank, New Jersey, $100, assignment of patent for improved shoe for car brakes?
A. I have the original assignment of the patent here made by Joseph Wood.
1835 Q. What patent was it?
A. No. 45106; also patent No. 41114, dated November 5th, 1864.
Q. You don't know anything about those patents except what you find in the assignment?
A. That is all.
Q. I observe that in the assignment the patents are dated respectively November 15th, 1864, and November 5th, 1864. Is that correct?
A. It is; yes, sir.
Q. Page 198, Pennsylvania Railroad Company, $2,232.75, remodeling, August 22d, 1866?
A. Cars Nos. 49, 10, 48 and 3.
Q. Page 191, Doughten, Renshaw & Wilkins, $870.74, sheeting.
A. No specific car.
Q. Page 200, Mary A. Harvey, $57.92, sewing?
A. No specific car.
Q. Same page, N. Rulon, $7, plated cups?
A. Silver palace No. 1. At that time, being the first car, it was not numbered, but it was called silver palace.
Q. Page 202, Marietta and Cincinnati Railway Company, $2,493.31 for two sets of trucks?
A. That is not designated as to the particular car.
Q. Same page, James L. Howard, $456.75 for head linings?
A. Decorating linging for silver palace car.
Q. Page 203, Charles Lafferty, $10 for hauling cars 67 and 68. Is there anything to indicate the nature of that hauling?
A. Yes, sir; from J. R. Bolton's to West Phildelphia.
Q. Who was Bolton?
A. The builder.
Q. Same page, $1,346.74, to running expenses, it being stated that there is no voucher or check for this item. What was the nature of those running expenses, if you know?
A. It was a ledger entry charged to construction account, and credited to running expenses apparently for deficiency of earnings to the dividend at that time.

1836 Q. Did you include that item in your total of charges for equipment?

A. No, sir.

Q. Why was it placed upon the notes?

A. Because the total of that equipment account would be called in question, I suppose, with my figures, and I wished to demonstrate wherein the difference lay.

Q. Is that one of those items of deduction as to which you testified in closing your direct examination?

A. Yes, sir.

Q. Same page, B. F. Kerr, $2, hooks and eyes?

A. No specific car, but it has a memorandum sent to Jonah. He was the general superintendent—Jonah Woodruff.

Q. Page 205, Wilhelm & Neuman, $793.14, hardware?

A. No specific car.

Q. Leedom & Shaw, $179.24, carpets?

A. Car No. 5.

Q. Page 206, Doughten, Renshaw & Wilkins, $125.44, sheeting?

A. No specific car.

Q. Same page, W. H. Carryl, $842.89, rep, terry and tapestry.

A. No specific car.

Q. Page 207, S. M. Atwell, $20.40, sewing?

A. No specific car.

Q. Same page, J. B. Shannon, $4.57, brushes?

A. Cars No. 67 and 68.

Q. Page 208, C. Brintzinghoffer, $5.40, brushes?

A. No specific car.

Q. Same page, Leedom & Shaw, $250.66, carpets?

A. No specific car.

Q. Page 209, Doughten, Renshaw & Wilkins, $127.78, toweling?

A. No specific car.

Q. Same page, Mary A. Harvey, $69.73, sewing?

A. No specific car.

Q. Page 210, Jennie Norman, $24, sewing?

A. No specific car.

1837 Q. Same page, C. Brintzinghoffer, $33.60, brushes?

A. No specific car.

Q. Same page, Charles Lafferty, $20, hauling cars?

A. Two cars from J. R. Bolton to West Philadelphia, $10, cars Nos. 63 and 64.

Q. Page 213, Doughten, Renshaw & Wilkins, $545.40, dry goods?

A. No specific car.

Q. Page 214, Leedom & Shaw, $310.32, carpets?

A. No specific car.

Q. Same page, James Spear, $18.50, spittoons?

A. In that case I have only the stub of the check. The check will not show the specific car.

Q. Is there anything to indicate the specific car?

A. No, sir.

Q. Same page, S. M. Atwell, $46.20, sewing.

A. No specific car.

Q. Same page, Mary A. Harvey, $34, sewing.
A. No specific car.
Q. Page 215, J. B. Shannon, $3.50, wrenches.
A. No specific car.
Q. Same page, C. Brintzinghoffer, brushes, $9.60.
A. No specific car.
Q. Page 216, New Jersey Manufacturing Company, $136 for comforts?
A. No specific car. That is indorsed for equipment.
Q. Same page, Abraham Turner, $212.40, cotton laps?
A. That is indorsed to be for equipment. No specific car.
Q. Page 217, Doughten, Renshaw & Wilkins, $1,576.85, prints and sheeting?
A. No specific car.
Q. Page 217, New Jersey Manufacturing Company, $528, comforts?
A. No specific car:
Q. Page 218, Wilhelm & Neumann, $5.60, brushes and comb racks?
A. No specific car.
1838 Q. James Spear, $20.50, spittoons?
A. No specific car.
Q. Page 219, Leedom & Shaw, $75.25, carpets?
A. No specific car.
Q. Same page, S. M. Atwell, $58.60, sewing.
A. No specific car.
Q. Page 220, C. Brintzinghoffer, $11.10, brushes?
A. No specific car.
Q. Same page, Jennie Norman, $47, sewing?
A. No specific car.
Q. Same page, Mary A. Harvey, $27.56, sewing?
A. No specific car.
Q. Page 221, Abraham Turner, $400.80, cotton laps?
A. No specific car.
Q. Page 223, Bellefontaine Railroad Company, $1,813.25 for two sets of six-wheel trucks, November 13th, 1865?
A. That is one that I produce no voucher for, but stub of check.
Q. From the information in your possession, what was the destination of that expenditure?
A. It was for sleeping-car trucks, apparently.
Q. It is for two sets of six-wheel trucks, according to your testimony. Now, I ask you for what equipment, if any?
A. No specific car.
Q. No specific equipment?
A. There is nothing that I can trace to a specific car, but it was not for use in a parlor.
Q. There is, however, nothing to indicate that it was for equipment—that is, nothing in the papers and vouchers in your possession excepting what appears already on the notes, that it is for two sets of six-wheel trucks?
A. I will refer to the check book. The check reads, " November

20th, 1865, to the order of R. N. Brown, for bill of trucks." It gives no specific number of car, but it reads, "Bill of trucks for equipment, $1,813.25. For repair bill, $419.69."

Q. Same page, Charles Lafferty, $25, hauling cars, November 1st, 1865?

1839 A. That was for four passenger cars from J. R. Bolton's to West Philadelphia. No numbers are given of the cars.

Q. Page 224, Doughten, Renshaw & Wilkins, $1,300.48, Turkey-red prints?

A. No specific car.

Q. Page 225, C. Brintzinghoffer, $10.70, brushes?

A. No specific car.

Q. Same page, New Jersey Manufacturing Company, $273.50, making comforts?

A. No specific car.

Q. Page 226, Jennie Norman, $23, sewing?

A. No specific car.

Q. Same page, Mary A. Harvey, $99.97, sewing?

A. No specific car.

Q. Same page, Abraham Turner, $480, cotton laps?

A. No specific car.

Q. Page 227, Leedom & Shaw, $169.98, carpets?

A. No specific car.

Q. Same page, Charles Lafferty, $20, hauling?

A. Two passenger cars, from J. R. Bolton's to West Philadelphia. No specific numbers.

Q. Page 229, Abraham Turner, $373.60, cotton laps?

A. No specific car.

Q. Same page, Paxson, Shubert & Co., $1,304.34?

A. No specific car.

Q. Same page, John Lightner, $100 for use of patent axle boxes. I observe in the notes of your direct testimony that it is stated that this is called license of John Lightner for $100, dated October 12th, 1865. What was the nature of the license?

(Witness produces license, and stated that it is a license to Central Transportation Company to use John Lightner's improvement in axle boxes for journals of railway cars, under letters patent dated November 21st, 1848, No. 5935, said patent having been extended on November 19th, 1862, for a term of seven years.)

Q. This patent had, by its terms, expired by the time the Pullman Company took charge?

A. Yes, sir; apparently.

1840 Q. Did you include that item of $100 in your total?

A. Yes, sir.

Q. Will you, in making up your summary, eliminate that item?

A. No, sir.

Q. Why do you include it?

A. A portion of that was paid for construction on all cars on which it was used. By reason of our turning the cars over to Mr.

Pullman with those on, it was none the less chargeable to the Central Transportation Company's construction.

Q. You don't know for what cars that patent was used?

A. I do not.

Q. Page 231, Pierce & McCartney, $37. There is nothing in the notes of the direct testimony to indicate the nature of that expenditure. What was it?

A. It is put down here as premiums for hastening work. No specific equipment.

Q. Is that sum included in the totals?

A. Yes, sir.

Q. I suppose you consider that a proper charge to equipment, do you?

A. I do.

Q. Same page, New Jersey Manufacturing Company, $100, making quilts?

A. No specific car.

Q. Page 232, New Jersey Manufacturing Company, $126, making quilts?

A. No specific car.

Q. Same page, C. Brintzinghoffer, $32.40, brushes?

A. No specific car.

Q. Page 233, Joseph Blackwood, $145.94, carpets?

A. No specific car.

Q. Same page, Doughten, Renshaw & Wilkins, $1,920.06?

A. No specific car.

Q. Same page, Abraham Turner, $180, cotton bats?

A. No specific car.

Q. Page 234, Pennsylvania Railroad Company, $7,500, six sets of trucks, September 8th, 1865?

1841 A. That is not specified as to which cars those were under?

Q. Nor whether they were under any car, is it?

A. Yes; the Central Transportation Company to the Pennsylvania Railroad Company, debtor, for six sets of passenger-car iron trucks complete, at $1,250 each, $7,500, Altoona shops, September 5th, 1865.

Q. Is it designated that those went into any cars?

A. It is indorsed, "This is to certify that the within is correct, and that the amount is chargeable to equipment." The specific cars are not mentioned.

Q. It is not mentioned that they went under any cars?

A. No, sir.

Q. Same page, Philadelphia, Wilmington and Baltimore Railroad Company, $266.67 for use of car 36, from May 1st, 1864, to January 1st, 1865. Did you include that item in the total charges for equipment?

A. Yes, sir.

Q. Why?

A. Because in making up that statement I have simply stated what appears on the face of the ledger.

Q. And that is on its face, is it not, a payment made by the Cen-

tral Transportation Company to the railroad company for the rental of a car owned by the Philadelphia, Wilmington and Baltimore road?

A. Yes, sir; and not properly chargeable to construction.

Q. Will you eliminate that item from your totals?

A. I will.

Q. Page 235, Philadelphia, Wilmington and Baltimore Railroad Company, $1,986.11, two sets of trucks; what was that for?

A. Materials and labor furnished in building trucks for two sleeping cars in the months of October and November, 1864, for cars Nos. 35 and 42.

Q. Same page, Mary A. Harvey, $48.30 for sewing?

A. No specific car.

Q. Page 236, Doughten, Renshaw & Wilkins, $285.10?

A. No specific car.

Q. Same page, Jacob Fisher, $10, hauling?

1842 A. Cars Nos. 47 and 48, from Bolton, Dykeman & Co. to West Philadelphia.

Q. Page 237, Jennie Norman, $31 for sewing?

A. No specific car.

Q. Same page, C. Brintzinghoffer, $7.80, brushes?

A. No specific car.

Q. Same page, Reeve L. Knight & Sons, $16, cocoa matting.

A. No specific car.

Q. Page 239, Doughten, Renshaw & Wilkins, $225.98, toweling and sheeting?

A. No specific car.

Q. Page 240, James Spear, $32.50, spittoons?

A. No specific car.

Q. Same page, Mary A. Harvey, $81.12 for sewing?

A. No specific car.

Q. Page 241, Jacob Fisher, $20, hauling cars?

A. That was for hauling cars Nos. 55, 56, 59 and 60 from Bolton's to West Philadelphia.

Q. Page 242, James Spear, $32.25, spittoons and water tank?

A. No specific car.

Q. Same page, Joseph Blackwood, $271.26, carpets?

A. No specific car.

Q. Same page, C. Brintzinghoffer, $10.27, brushes?

A. No specific car.

Q. Page 243, Joseph Blackwood, $39, mats?

A. No specific car.

Q. Same page, Jennie Norman, $28, sewing.

A. No specific car.

Q. Same page, New Jersey Manufacturing Company, $120, quilts?

A. No specific car.

Q. Same page, Charles Lafferty, $20, hauling?

A. That was hauling two cars from J. R. Bolton's to West Philadelphia. No specific cars.

Q. Page 245, New Jersey Manufacturing Company, $144, quilts?

A. No specific car.

1843 Q. Same page, Wilhelm & Neumann, $33.60?
A. No specific car.
Q. Page 246, William Turner, $270, cotton laps?
A. No specific car.
Q. Same page, Doughten, Renshaw & Wilkins, $716.60, toweling and prints?
A. No specific car.
Q. Page 247, C. Brintzinghoffer, $9.75, brushes?
A. No specific car.
Q. Same page, R. L. Knight & Sons, $94.50?
A. No specific car.
Q. Page 248, Joseph Blackwood, $62.50, carpeting?
A. No specific car.
Q. Page 250, W. H. Carryl, $213.35, dry goods?
A. No specific car.
Q. Page 251, C. E. Morgan & Co., $916.32 for muslins and prints?
A. No specific car.
Q. Page 252, Jennie Norman, $37.70, sewing?
A. No specific car.
Q. Page 253, New Jersey Manufacturing Company, $33, comforts?
A. No specific car.
Q. Same page, Abraham Turner, $225, cotton laps?
A. No specific car.
Q. Page 254, Reeve L. Knight & Son, $156.56?
A. No specific car.
Q. Same page, Doughten, Renshaw & Wilkins, $60, towels?
A. No specific car.
Q. Page 257, J. L. Howard & Co., $3,000, two hundred pairs blankets?
A. No specific car.
Q. Page 258, Charles Lafferty, $10, hauling?
A. That was for hauling a car from J. R. Bolton's to the Baltimore depot. No specific car.
Q. Page 259, W. H. Horstman, binding, $22?
A. No specific car.
Q. Page 259, Jennie Norman, $17.60, sewing?
1844 A. No specific car.
Q. Page 260, James Ruggles, $159, making quilts?
A. No specific car.
Q. Same page, Charles E. Morgan & Co., $314.21, dry goods?
A. No specific car.
Q. Page 261, Charles Lafferty, $10, hauling?
A. No specific car.
Q. Page 262, R. Hayes, $12.05, expenses. What expenses were those?
A. They were for one new hatchet for car 35. There are some specifications for new cars—new cars 35 and 42.
Q. Page 264, Brady & Co., $96, toweling?
A. No specific car.

Q. Page 265, Barcroft & Co., $1,074.54, muslins and prints?

A. No specific car.

Q. Page 266, James Spear, $129.50, stoves?

A. That was for cars Y and Z.

Q. Same page, Philadelphia, Wilmington and Baltimore Railroad Company, $55 for interest. What interest was that?

A. The cost of one sleeping car for one month. I will eliminate that item.

Q. Page 267, Merchants' (New Jersey) Manufacturing Company, $192.45, quilting?

A. No specific car.

Q. Same page, Abraham Turner, $550.22, cotton laps?

A. No specific car.

Q. Page 268, Ohio and Mississippi Railroad Company for three sleeping cars, $21,761.76. What cars were those?

A. I don't know the letters or the names of those sleeping cars.

Q. You don't know whether that was for cars that were in existence at the time that the Pullman Palace Car Company, in February, 1870, took the equipment of the Central Transportation Company, do you?

A. No, sir.

1845 Q. There is nothing upon the books of the company to show that, so far as you have seen, is there?

A. No, sir.

Q. Same page, Cincinnati, Hamilton and Dayton Railroad Company, $12,000 for two cars. What cars, if any, do the papers, books and vouchers in your possession show that that expenditure was incurred for?

A. I have a bill of the Cincinnati, Hamilton and Dayton Railroad Company for two sleeping cars, as per contract, dated sixth day, September 26th, 1864, $12,000.

Q. You don't know yourself personally what cars those were for?

A. No, sir.

Q. There is nothing to show whether those cars were in existence in February, 1870, and were turned over to the Pullman Company, is there?

A. I cannot testify as to the history of specific cars.

Q. Can you testify as to the history of cars represented by these specific expenditures?

A. No; but the history of the cars in the possession of Mr. Pullman will show whether those cars were turned over to him. As I understand it, with the exception of those cars which were destroyed and settled for during the operation of the Central Transportation Company by its own people, all cars which the Central Transportation Company bought were turned over to the Pullman Company.

Q. That you do not know, however, personally, do you?

A. No further than by my reading of the testimony.

Q. You don't know it of your own knowledge?

A. No, sir.

Q. Page 270, Philadelphia, Wilmington and Baltimore Railroad Company, $55 for interest. What interest was that?

A. That is not properly chargeable to equipment, and I will eliminate it.

Q. On the same page find another charge, payment to Philadelphia, Wilmington and Baltimore Railroad Company, $55 interest, as of August 31st, 1864. That will be eliminated also, I suppose?

A. Yes, sir.

1846 Q. Same page, J. R. Bolton, balance on account of six cars, and extra bill for same, $1,565.45. What cars were those?

A. Six cars for equipment. No specific cars.

Q. Page 271, Williams & Arnest, $56.18 for prints, August 23d, 1864?

A. No specific car.

Q. Same page, J. R. Bolton, $4,500 on account of cars?

A. No specific car.

Q. Page 272, Mary A. Harvey, $23.04?

A. Cars Y and Z.

Q. Same page, Charles L. Sharpless, $74.80?

A. Equipment of cars Y and Z.

Q. Same page, George Foelker, $320 for laps?

A. No specific car.

Q. Page 274, Charles E. Morgan & Co., $810.79?

A. No specific car.

Q. Same page, Philadelphia, Wilmington and Baltimore Railroad Company, $55, interest July 30th, 1864?

A. I will eliminate that.

Q. That is not a proper charge to equipment?

A. No, sir.

Q. Page 274, James Spear, $32, spittoons?

A. Cars Y and Z.

Q. Page 275, G. R. Dykeman, $85.20, payments in June. What payments were those?

A. I find no voucher. No specific equipment.

Q. Is there anything on the books of the company to show that that was for equipment?

A. No; there is nothing further than a charge to equipment paid by Dykeman in June. He was one of their superintendents. Let me say that these superintendents all made reports each month; of course, I don't know that they made more than one, but certainly one. Most of those I can find, but I couldn't track any of the matters contained in them at this time, so that I did not trouble to do that.

Q. Same page, Elias Hess, $71.60 for washstands. What equipment was that?

A. No specific equipment.

1847 Q. Same page, Philadelphia, Wilmington and Baltimore Railroad Company, $55, interest, June 30th, 1864. That is improperly charged to equipment, is it not, and will be eliminated?

A. It is and it will be eliminated.

Q. Same page, Henry Hamer, $396, coverlids.

A. No specific car.

Q. Page 276, James L. Howard & Co., $1,222, blankets?

A. No specific car.

Q. Same page, J. R. Bolton, $5,000 on account of cars, voucher dated June 13th, 1864. What equipment, if any, was that?

A. The whole bill reads, "Central Transportation Company, in account with J. R. Bolton, for sleeping cars delivered them, under contract of September 10th, 1863." March 31st, 1864, two sleeping cars, $8,400; May 31st, two sleeping cars, with alterations, as per agreement, $9,008.59; August 20th, two sleeping cars, with alterations, as per agreement $9,353.58; one car added to contract as per agreement with Mr. Childs, $855.76; making a total bill of $27,617.93, with payments at various dates in settlement of the account.

Q. This is one of these payments?

A. Yes, sir.

Q. The numbers of the cars you do not know?

A. No; but they were probably not numbered but lettered, as up to that time they had been lettered.

Q. Page 277, Charles Lafferty, $32 for hauling, June 30th, 1864.

A. That was hauling four cars not specified from Bolton's to West Philadelphia.

Q. Same page, Charles Mullikin, $118.45, marble slabs and basins, June 16th, 1864.

A. No specific car.

Q. Page 278, Henry Hamer, $387.

A. Cars W and X.

Q. Page 279, another entry, Philadelphia, Wilmington and Baltimore Railroad Company, $55, for interest May 31st, 1864. Should that be eliminated?

A. Yes, sir.

1848 Q. Page 280, Doughten, Renshaw & Wilkins, $50, towels.

A. No specific car.

Q. Same page, Reeve L. Knight & Sons, $152.25, carpets.

A. No specific car.

Q. Same page, C. Brintzinghoffer, $7.50, brushes?

A. No specific car.

Q. Page 281, O. W. Childs, $8.03, sundry items for equipment account?

A. No specific car. I have no voucher for it.

Q. Page 282, L. M. Shoemaker, trustee, account Baltimore and Ohio Railroad Company, $100?

A. No specific car.

Q. Is there anything to indicate that it is for equipment?

A. Nothing, except that it is charged to equipment.

Q. But the nature of the equipment is not indicated?

A. No, sir.

Q. You do not know whether the charge is correct or not?

A. No, sir.

Q. Same page, Mrs. George J. Woodruff, sewing, $10.95?

A. No specific car.

Q. Same page, Mary A. Harvey, $8.70, sewing?

A. Cars C and I.

Q. Page 283, James L. Howard, $1,078, blankets?

A. No specific car.

Q. Page 283, James Spear, $182.50, stoves?

A. I have no voucher for that. No specific car.

Q. Page 284, James Spear, $14.40, stoves?

A. Cars C and I.

Q. Page 284, J. R. Bolton, $3,000, advance on cars. Is that on the same contract about which you testified before?

A. Yes, sir.

Q. Page 285, Steubenville route, $3,402.25 for one sleeping car. Explain that charge, if you please.

A. I have here a charge to the Central Transportation Company, in account with Alfred Gaither, for one sleeping car, $3,402.25, and a letter to George C. Franciscus & Co., dated February 29th, 1864.

The facts in my possession show that the Central Transporta-
1849 tion Company paid for the sleeping car $3,402.25, and for a contract for the running of their cars over the Steubenville route $15,000 in the stock of their company.

Q. Do you know whether that was one of the contracts turned over to the Pullman Company?

A. Yes, sir; I think it is mentioned in the lease.

Q. What car was that?

A. I don't know.

Q. Then there is nothing to show, so far as you know, upon the books of the company, whether that car, for which $3,402.25 was paid, was, as a matter of fact, turned over to the Pullman Company?

A. No, sir.

Q. Page 285, Jacob Fisher, $5, hauling trucks?

A. No specific car.

Q. Page 286, J. Butler, $30, storing trucks?

A. No specific car.

Q. Same page, Williams & Arnest, $74.29, muslins?

A. No specific car.

Q. Page 287, J. R. Bolton, $3,000, two sleeping cars?

A. No specific voucher.

Q. Page 287, George Harding, for patents and contracts, $23.50.

A. That is a bill for copying four patents at Washington and printing fifty blank contracts. I suppose he prepared them.

Q. You don't know what patents they were or what contracts?

A. No, sir; it is not specifically stated. I have here his original receipt that it was paid for four patents.

Q. On page 288, O. W. Childs, $35.13, sundry bills paid by him?

A. No specific car.

Q. Same page, W. C. Stevenson, bill for towels, $3.80?

A. No specific car.

Q. Page 290, Baltimore and Ohio Railroad Company, $3,408 for four sets of trucks. What specific cars were those, if any?

A. No specific cars.

1850 Q. Same page, Williams & Arnest, $310, for prints.

A. No specific car.

Q. Page 291, Joseph R. Bolton, $1,500 on account of car. Is that under the same contract which you last testified about?

A. It is. There is no specific car.

Q. Page 291, James Spear, $150.90, car stoves?

A. No specific car.

Q. Same page, O. W. Childs, $1.08?

A. No specific car.

Q. Page 292, Mrs. George J. Woodruff, $16.32, sewing?

A. No specific car.

Q. Same page, Henry Hamer, $324, coverlids.

A. No specific car.

Q. Same page, Field & Hardy, $50.74?

A. No specific car.

Q. Page 293, C. Brintzinghoffer, $4.35, brushes?

A. No specific car.

Q. Same page, Joseph Blackwood, $68.22, carpets?

A. No specific car.

Q. Same page, James Spear, $38.40, stoves?

A. No specific car.

Q. Page 294, Williams & Arnest, $60.26, dry goods?

A. No specific car.

Q. Same page, J. R. Bolton, $2,799.60, contract for cars. Is that the same contract as to which you last testified?

A. No, sir; apparently not. It is another contract.

Q. What is it?

A. It says, "For two first-class sleeping passenger cars, $9,000, with loans in settlement of it added at various dates up to August, 1863. This is previous to the date of the other contract.

Q. What are the items made up of?

A. A payment of $1,500, May 1st; $1,500, May 15th; $1,500, June 1st, June 16th, July 14th and August 18th. Those of July and August are the only two which are represented in the Central Transportation Company's specific charges. The first charges
1851 were apparently made to have a contract with J. R. Bolton and O. W. Childs and others, which was turned over and covered in the large charge of $274,000 with which the account closes.

Q. These were for what cars?

A. They are not mentioned. The number only is specified. This was for two cars. The specific cars are not known.

Q. I find on page 295 a payment on account of new cars being built under new contract, $1,500. That refers to what you have just testified about?

A. Yes, sir.

Q. On page 295 there is an item, which you have taken from ledger, folio 3, of $271,223.46, for which no voucher appears, which you designate as having been taken from old book, and also state that it is a cash-book entry charged to equipment expended for cars, and contract with the railroad company to this time. That is an entry as of what date?

A. It is an entry as of date July 1st, 1863.

Q. There are no vouchers accessible for that entry?

A. There are no vouchers accessible, and I will say that when I was investigating this in the first place, and when I came to this entry reciting that it came from old books, I was very much puzzled to know where the old books could be, as this was cash book No. 1. I went to Mr. Cottringer, in the office of the Pennsylvania railroad, and made inquiry from him as to what explanation there could be of that entry. His explanation of it was that at the time the Central Transportation Company was organized and purchased by consolidation of the interest of O. W. Childs, E. C. Knight and others, that he went over the books of the various people from whom the Central Transportation Company purchased their cars, and took a statement from their books showing the cost of cars up to that time, and that that was the only explanation which he could give at that time, as they retained possession of the books.

Q. Did you include that item of $271,223.46 in the total of cost of equipment?

A. Most assuredly.

1852 Q. And the only thing that you had to indicate that it was actually incurred was a single entry in the cash — and the ledger of the Central Company, without any voucher?

A. Yes, sir. You will understand that while there is no voucher, the gentlemen incorporating the company took stock in the company to a very large extent, and were still practically the owners of all these things. That represented the actual outlay in cash which was to be charged to the new company.

Q. I find on page 185 of the notes a charge of $1,520.62, which is an item appearing in the cash book, under date December 30th, 1866, as paid through D. Fleming, an installment of bonus on capital to the State to date. Did you include that item in the total of charges for equipment?

A. That is not properly charged to equipment.

Q. The question is, have you included it?

A. I have.

Q. Will you eliminate that item in your summary?

A. I will.

Q. Have you included any other similar items that you recall in the total charges to equipment?

A. No, sir; I was as careful as I was capable of being in giving my original testimony where there was any doubt of that kind, and I made a very clear statement of it.

Q. Do you know whether any of the articles which had been transferred were bought at times designated in the notes and referred to in the testimony thus far, were in existence in February, 1870, and were transferred to the Pullman Company?

A. With my own knowledge I know nothing at all about it.

Q. There are payments for patents, prior to lease, aggregating $513,720.92, made up partly of royalty and partly in a lump sum. The payments for royalties are $247,720.92. Do you know for what

patents those royalties were paid? Is there anything in the books to show that?

A. Entries are usually made in this shape, "Paid A. J. Myer, W. Whiting, E. C. Knight, O. W. Childs, twenty per cent. earnings, per contract."

1853 Q. Do you know whether all or any of the items of payments for royalty, which aggregated $247,720.92, and as to which you gave testimony on page 300 of the notes, were in connection with patents which were subsequently assigned to the Pullman Company or of which they received a benefit?

A. I know that they were, some of them, and I believe that they were all of them so paid.

Q. Do you know whether any of those patents had not expired in February, 1870?

A. I do not.

Q. Then why do you say that you believe as you have stated?

A. Because I don't believe that they had expired, or they would not have been recited in the lease.

Q. Is it not a fact that specific patents were recited in the lease?

A. Yes, sir.

Q. Is it not a fact that the books of the Central Transportation Company show a lump sum for royalties, without designating what specific royalties and in connection with what specific patents?

A. Yes, sir.

Q. Is there any way that you can separate this lump sum of payments for royalties of $247,720.92 into those, in connection with patents, which were in existence in February, 1870, and those which were not in existence in February, 1870?

A. No further than appear in charges on the cash book, which recite, as I have testified, that they were paid to A. J. Myers, W. Whiting, E. C. Knight and O. W. Childs, twenty per cent. of earnings on account of their patents, which patents were afterwards bought—their whole life bought for a lump sum—and leased to the Pullman Company.

Q. You are using those names as samples of the nature of the entries, and not with respect to the intent of the entries or of the scope of the entries?

A. I am using those entries as showing the scope of the entries.

Q. Did none of those men own patents which expired before February, 1870?

A. I don't know.

1854 Q. Then why do you say that, because their names appear on the books as persons to whom the royalties were paid, that it follows that those patents were in existence in February, 1870?

A. Because they were settled with for the unexpired life of their patents by the payment of a lump sum.

Q. At what date?

A. October 30th, 1869. That entry recites, "Paid to patent owner for transfer of all their rights under contract of July 1st, 1863, as per new agreement dated September 30th, 1869." That proves that what I have said is substantially correct, because as the various

charges were made for royalties paid, it recites that it is on account of that contract of July 1st, 1863.

Q. The question to which I am addressing myself is this, whether the payments for royalties, which aggregate $247,720.92, were made for any patents which expired before February, 1870. Do you know that?

A. I do not.

Q. Is it possible, from inspecting or examining the books of the Central Transportation Company, to ascertain whether those royalties were partially paid for any patents which expired before February, 1870?

A. Not by inspection of the books.

Q. Then you have no means of knowing what is the analysis of those items of $247,720.92, so as to say for what portion of it the Pullman Palace Company got value for, and what portion they did not get value for?

A. If I understand the matter rightly, they got value in any event.

Q. How do you so understand it?

A. Because if the Central Transportation Company had paid royalty for the use of a patent and used it on their cars, and Mr. Pullman got possession of those cars, using that patent whether the patent had expired or not, he could not have gotten the car in that condition at that time, with that patent on, without having paid the royalties.

Q. Supposing it were a patent for use and not for construc-
1855 tion; supposing it were a royalty for the use of a car, do I understand you to say that after that use had been had the person who succeeds to the use gets value?

A. No, sir; I was supposing that those patents were all for construction of the car; I don't know.

Q. The final lump sum of $266,000—can you analyze that sum, and say whether or not it was paid for patents part of which had expired, or all of which had expired, before February, 1870?

A. No, sir.

Q. Then all you know, I presume, as to this item of $513,720.92, is that it appears upon the books as a total of payments made for payments by the Central Transportation Company prior to the lease of that company's property and franchises to the Pullman Palace Car Company; isn't that so?

A. It is.

Q. The capital of the Central Transportation Company, you have testified, was $2,200,000. Was that fully paid or not, or don't you know?

A. $2,000,000 of it was fully paid.

Q. What was the $200,000?

A. That was an increase of capital stock.

Q. In dividends?

A. It was made by agreement with Mr. Pullman to make his payment of $264,000 fit the capital of the Central Transportation Company.

Q. Was that $2,000,000 capital of the Central Transportation Company paid in cash, or partly in cash and partly in property, or don't you know?

A. I don't know.

Q. Is there any means of ascertaining that from the books of the company?

A. No, sir.

Q. Is it not a fact that a large part of that capital was paid upon valuation of property?

A. I cannot say, but I think not.

Q. Is it not a fact that a large part of that was paid by putting a valuation on patents?

A. I think not as to that, but I am in the dark as far as the records go.

1856 (Mr. Wintersteen calls upon the witness for a statement summarizing his totals of expenditures for equipment and contracts, eliminating from his totals those items which are not properly charged to equipment, and as to which reference was made in the course of the cross-examination, showing what items have been eliminated.)

Cross-examination adjourned to 3 p. m. Monday, June 5th, 1893.

PHILADELPHIA, *June 5th*, 1893—3 p. m.

Present: The examiner (Colonel Bell); Messrs. Prichard and Wintersteen, of counsel.

Mr. WECKERLY recalled.

Cross-examination resumed.

By Mr. WINTERSTEEN:

Q. Have you been able to go over the testimony so as to eliminate the items which you said you would eliminate?

A. Yes, sir.

Q. The items charged to equipment account which you said you would eliminate?

A. Yes, sir; I have.

Q. What amount did you find improperly charged to equipment account as payments to the Southern Transportation Company for use of cars?

A. $30,730.

Q. What amount did you find charged to equipment account as payments to other companies for use of cars?

A. To the Philadelphia, Wilmington and Baltimore road, $266.67.

Q. What is the total of the amounts improperly charged to equipment account by way of interest payments to any railroads or any companies?

A. $330 charged improperly as interest to the Philadelphia, Wilmington and Baltimore road.

Q. Those three several classes of items you have testified were improperly charged to equipment account and should be eliminated?

A. Yes, sir.

1857 Q. In addition to that what else have you?

A. In addition to that I have eliminated a charge of $108,756.63, made on folio 81 of the ledger, as for amounts credited this account instead of profit and loss.

Q. As to which you testified on what page?

A. I have no memorandum of the page.

Q. I believe you testified as to this in direct examination on page 298?

A. Yes, sir; 298 and 299.

Q. These items of improper charge?

A. There is one other yet.

Q. What other?

A. The other is for "$24,407.81." That has also been testified to on pages 298 and 299.

Q. Now, eliminating these items as improperly charged to equipment account from the aggregate of construction and equipment accounts appearing on page 298, in what respect will you modify the figure $1,357,247 appearing on page 298?

A. I reduce it by $164,490.44, leaving the proper charge for construction and equipment as $1,192,755.89.

Q. When you say leaving a proper charge to equipment and construction account of that last-mentioned sum, you include in the item all items that are charged to equipment account as to which you testified, other than those that you have specifically eliminated?

A. Yes, sir.

Q. You include also in that last-mentioned item everything designated on the vouchers as charged to equipment, whether or not it is charged to specific equipment?

A. Yes, sir.

Q. You have not made a separate list of those items as to which you testified, which you could locate in connection with specific equipment, from those which you could not locate in connection with specific equipment?

A. No, sir.

Q. I suppose you have no idea of what they would amount to without going over the testimony?

1858 A. I have some idea of that. As far as possible, when I was originally making up the figures, I tried to keep track of that, but inasmuch as in the cross-examination a large number of items appeared which I at first thought had no specific car, and I found afterward they had, it would be reduced very considerably from what my figures called for, so that I would not like to say that they would be correct figures without going over the whole testimony again.

Q. Can you state, roughly, how much of that total figure is charged to specific equipment and how much is charged to equipment, but no specific equipment being designated?

A. I have a memorandum which showed, as far as I could separate it, that there was a charge of $92,717.60 to equipment and $884,549.31

to cars, which were specifically charged. The amount of the further equipment I am unable to state.

Q. What was the first sum?

A. The first sum was $92,717.60 for equipment. That was as far as I had it charged to specific cars. For the cars themselves, the specific cars, eighty-four of them, the cost was $884,549.31. Then there was that large charge of two hundred and seventy-odd thousand dollars which there is no division of, and which I cannot separate at all.

By Mr. PRICHARD:

Q. Do you mean to say $92,000 was the amount which you could trace to specific cars?

A. Yes, sir.

Q. The rest was not traceable to any specific cars?

A. Yes, sir. Understand me, the point is this, that the car bids themselves, entirely outside of equipment sheets furnished or anything of that kind——

Q. $92,000 is equipment?

A. That is for equipment alone. It is for the equipment of the inside of the car.

Q. It does not relate to the construction of the car itself?

A. It does not relate to the cost of the car at all.

By Mr. WINTERSTEEN:

Q. What I mean is this: Are you able to state how much of that total $1,192,755.89 you can trace by reference to the books and vouchers of the company to specific cars or specific equipment of other kinds?

A. I can trace most of it, but I cannot tell the amount.

1859 Q. The only way, I presume, you can state how much of that is chargeable to specific equipment is by going through the testimony or making another examination of the vouchers, and eliminating those items as to which there is no information in the vouchers or in the books showing that they were chargeable to specific equipment.

A. That would be the only way it could be arrived at.

Redirect examination.

By Mr. PRICHARD:

Q. Is Mr. Cottringer dead?

A. Mr. Cottringer is dead.

Q. Are you familiar with his handwriting?

A. Yes, sir.

Q. These entries in the books you testified about are in his handwriting, are they not?

A. Yes, sir; that appears with reference to that cash book, but not as to these books. These books are some of them in Mr. Cottringer's handwriting and some of them in the handwriting of a clerk in his office. Some entries are both in cash and in the ledger.

By Mr. WINTERSTEEN:

Q. What portion of the records as to which you testified are in the handwriting of Mr. Cottringer?

A. The ledger accounts from 1863 until March, 1865, are all in Mr. Cottringer's handwriting, and also the cash books.

Q. Also the cash books for that period?

A. Yes, sir; for that period. All after that period are in the handwriting of some clerk in Mr. Cottringer's office?

Q. Then, with the exception of the entries during that period, that small period of time, Mr. Cottringer's handwriting does not appear?

A. No.

Q. In connection with the entries as to which you testified?

A. That is true.

Q. Will you produce a list of the items that you have eliminated from the total charged to equipment account and annex it to the testimony?

A. Yes, sir; I produce such a list.

1860 *List of Items Eliminated by the Witness from the Total Charge to Equipment and Construction Account.*

	Southern T. Co. for use of cars.		P. W. & B. R. R. for use of cars.		P. W. & B. R. R. interest.	
Folio testimony	28.... 1,200		234	$266.67	266	$55 00
	28.... 1,200				270	55
	35.... 1,200				270	55
	43.... 1,200				274	55
	50.... 1,200				275	55
	56.... 1,200				279	55
	73 ... 1,200					
	73.... 1,200					330
	82.... 1,350					
	88 ... 1,350					
	94.... 1,350					
	100.... 1,350					
	103.... 1,350					
	103.... 1,350					
	106.... 1,050					
	110.... 1,050					
	113.... 920					
	124.... 900					
	126.... 900	Charge to C. & E.....				$1,357,347 00
	129.... 900	Eliminated % cars de-				
	132.... 810	stroyed.....		$24,407 81		
	135.... 750	Ledger charge f. 81.. ...		108,756 63		
	138.... 550	S. T. Co.....		30,730 00		
	141.... 450	P. W. & B. R. R.....		266 67		
	143.... 450	P. W. & B. R. R.....		330 00		
	144.... 450					164,491 11
	146 ... 450					
	148.... 300					$1,192,755 89
	155.... 300					
	160.... 300					
	165.... 300					
	172.... 300					
	178.... 300					
	179.... 300					
	181.... 300					
	183.... 600					
	191.... 400					
	30,730					

Adjourned until June 12th, 1893 at three o'clock

1861 MONDAY, *June 12th*, 1893—3 p. m.

Present: The examiner (Colonel Bell), and Messrs. Prichard and Wintersteen, of counsel.

WILLIAM A. BROWN, having been duly sworn, was examined as follows:

By Mr. PRICHARD:

Q. What is your name, residence, and occupation?

A. My name is William A. Brown; age, seventy; occupation, builder; residence, 1831 North Eleventh street.

Q. Please state in your own way what has been your connection with sleeping-car transportation in this country.

A. In the first place, I am the patentee of this patent that Pullman has. It was gotten out, I think, in 1859 or 1860. I was connected with E. C. Knight and William C. Stevenson; Stevenson came in afterwards. The patent was mine, and was gotten out in my name. The patent to which I refer was the hanging of the second couch to the top or the side of the car, which they can't get over.

Q. In 1870, at the time of the lease of the Central Transportation Company to Pullman, were you a stockholder of the Central Transportation Company?

A. Yes, sir.

Q. You are not now, I believe?

A. I am not.

Q. Please state what the situation was with regard to the ownership and importance of patents relating to sleeping cars at that time.

A. The way the thing was worked in the first place, on our patent we built the cars, and run them for a while, and then Mr. Woodruff had cars on the Pennsylvania road, and he saw that he couldn't get along without our patent, and came forward and made a proposition to consolidate the two companies—that is the Central—it wasn't the Central then, but E. C. Knight—but the two then formed the Central Transportation Company.

Q. So that the Central Transportation Company was formed to operate cars under your patent, among others?

1862 A. Yes, sir; they took out the patent—that is, the Knight and the Woodruff consolidated—and then they run it as the Central Transportation Company. It run along for that way for years, until Pullman infringed upon the patent. Then the Central Transportation Company sued him, and it run along in that way for some time, until he found the thing was going against him, and then he came up and made his proposition. That brought him to terms.

(Mr. Wintersteen objects to statements of opinion by the witness as to any alleged infringement or motives on the part of Mr. Pullman.)

The WITNESS: He couldn't run his cars without this patent, and

he found that out, and then he made this proposition to the Central Transportation Company. He wouldn't have done it if he could have done without it.

(Objected to.)

Q. At that time the Central Transportation Company had the right to run cars under your patent?

A. Yes, sir; they had the right and had the patent.

Q. They were suing Pullman, claiming that he was infringing?

A. Yes, sir; the Central Transportation Company sued Pullman for infringement on the patent. He was running cars on our patent.

(Objected to.)

Q. Of what importance was this patent for the upper berths in sleeping cars transportation; was it an important or an unimportant patent?

A. It was very important. They couldn't get along and can't get along today without, to make a day car.

Q. Was that the basis of the subsequent construction of the double-berth car?

A. Yes, sir. They had double berths before, but they were box cars. You couldn't make a day car of them.

Cross-examination.

By Mr. WINTERSTEEN:

Q. What has been your experience as a patentee?

A. I have got out several patents in my time. I got out 1863 this patent. I had no trouble in getting the patent at all. It was a clear thing.

Q. What patents have you procured, and state their numbers if you can remember them?

A. I have not got the numbers of them; it has been so long ago that I have forgotten them. I got a patent on this arrangement of a sleeping car, and also a patent on a washing machine. I never did anything on it, however, more than to get the patent and give it away afterwards.

Q. You procured how many patents on a sleeping car?

A. I got one; that is all.

Q. Have you access, or can you get access, to the specifications and the certificate granting patents to you, or anybody else, which you say you procured?

A. I don't know anything about that, whether I could or not. It has been so long ago that I don't remember much about it now. But I know the patent belonged to me, and I got it out, and I had no trouble in getting it.

Q. When did you procure the patent?

A. The book will show. I don't remember myself.

Q. Is the patent as to which you have testified, which you assigned

to the Central Transportation Company, patent No. 29137, issued July 17th, 1860. (Handing same to witness.)

A. Yes, sir. He uses that same patent today in every car that he builds.

Q. When did you sell that to the Central Transportation Company?

A. That I can't remember.

Q. How long after it was issued to you?

A. Some time afterwards, because we built cars and run them for awhile.

Q. How many years was it?

A. I can't remember.

Q. Was it five years?

A. It might have been five and it might have been more and it might have been less; I can't remember that. I know that we built cars after I got this patent, and run them.

1864 Q. State as well as you can about when you assigned this patent to the Central Transportation Company?

A. I can't remember.

Q. Please locate it as nearly as you can.

A. I can't come anywhere near it; I can't remember what year it was in.

Q. It was before 1870, of course?

A. Yes, sir.

Q. Was it before 1865?

A. That I can't tell you; I can't remember just when it was transferred to them.

Q. Did you execute formal assignment papers?

A. I suppose there was.

Q. How much did they pay you for it?

A. I was paid in stock.

Q. How much stock did you get for it?

A. I can't remember that now. It was two or three hundred thousand dollars' worth of stock.

Q. What stock?

A. Stock of the Central Transportation Company.

Q. Will the books of the company show what consideration passed?

A. I don't know about that. I didn't have anything at all to do with the goods. All I had to do with was with the patent, transferring the patent to them.

Q. I would like you to produce if you can a paper showing the transfer to the Central Transportation Company?

A. I have nothing of the kind. I have no writing of any kind.

Q. Then you don't recollect how much you received for transfer?

A. No, I can't remember that.

Q. Nor do you recollect the specific time when you did transfer?

A. No, sir; it has been so long ago. I didn't have much to do with that part of it, anyhow. That business was done by Mr. Knight, with William C. Stevenson; no, sir.

Q. Do I understand you to say after you assigned this
1865 patent to the Central Transportation Company, Mr. Pullman, or Pullman's Palace Car Company was sued by the Central Transportation Company for infringement on this specific patent?

A. Yes, sir.

Q. Where were they sued?

A. I think in Washington; I don't remember that either, exactly.

Q. While you do not remember the place or the date when they were sued, why is it that you say they were sued for infringement of this patent?

A. Because I know they were.

Q. Did you ever see the record in that case?

A. I knew of it. I was connected with them at the time.

Q. Did you ever see a scrap of paper connected with that case?

A. No; I didn't see any papers at all.

Q. You can't state anything in relation to the suit excepting that you say there was an infringement?

A. Yes, sir. He was sued for infringement, and the suit was stopped when he came up and made his proposition to the Central Transportation Company.

Q. How do you know that?

A. Because he did it.

Q. Did you take part in the business?

A. I didn't have any part in the business, but I was connected with the company.

Q. Then all you know is that you heard that Mr. Pullman was sued for an infringement?

A. Yes, sir.

Q. And you also heard that it was for an infringement of the patent that you had assigned?

A. Yes, sir.

Q. You also heard that the case was subsequently compromised?

A. Yes, sir; he compromised it. I know that he came down then with this interest and paid the Central Transportation Company.

1866 Q. Paid them what?

A. The interest that he agreed to pay them.

Q. What interest?

A. Interest on stock that he got from the Central.

Q. You mean that all you know is that Mr. Pullman, of the palace car company, paid them this $264,000, that being the consideration moving to the Central Transportation Company annually for the assignment of the company's property made in February, 1870?

A. I know that he paid for some time the money that he agreed to pay the Central Transportation Company.

Q. Under what agreement?

A. I don't know. It was an agreement he made with them.

Q. All you know is that he paid them some money?

A. I know that he did so; yes, sir.

Q. Did Pullman's Palace Car Company ever have any agreement

with the Central Transportation Company excepting the agreement made in 1870?

A. I suppose they had. I don't know. I had nothing to do with the papers, and I don't know anything about the papers.

Q. Why is it that you testify to certain things, and then when I ask you specifically you don't know anything personally about them.

A. I know, because he paid in this interest for awhile.

Q. Did he pay any interest to you?

A. The Central Transportation Company did. I owned some of the stock at the time.

Q. Did the Pullman's Palace Car Company ever pay you a dollar?

A. I got it through the Central Transportation Company. It was paid to them and they paid it to me.

Q. What interest do you mean that Pullman's Palace Car Company paid through the Central Transportation Company to you?

A. On the agreement he made with you.

Q. What agreement?

1867 A. I don't know. The agreement was made with them. That is all I know about it. He made some agreement with them, or he wouldn't have paid it.

Q. How much did he pay?

A. He paid what he agreed to at the time.

Q. You don't know what the agreement was?

A. No, sir.

Q. You don't know what it was for?

A. Yes, sir, certainly; it was for the use of the patent on the car that he got.

Q. Was that in writing?

A. I don't suppose that it was in any other way.

Q. When you refer to the agreement between Pullman's Palace Car Company and the Central Transportation Company, do you refer to the lease of the property of the Central Transportation Company to the Pullman Company made in February, 1870?

A. Well, I don't know that I can answer that question, but he received the patent and these things from the Central Transportation Company, I suppose, or he wouldn't have made any agreement with them.

Q. Then you don't know what agreement was made by Pullman's Palace — Company or by Pullman?

A. I don't know anything about that except that he agreed to pay a certain percentage.

Q. Do you know that?

A. Yes, sir; because he paid it in.

Q. How do you know he paid it through an agreement?

A. I know it from the Central Transportation Company. I got my interest from you.

Q. How do you know that they got it from Pullman?

A. I took their word for it. I got the money; that is all I cared about.

Q. Then you don't know, as a fact, that Pullman's Palace Car Company ever made an agreement with the Central Transportation Company—that is, you do not know it personally?

1868 A. No, sir; I do not know further than that, because I had nothing to do with making the agreement.

Q. Then why don't you say that you don't know anything about it personally?

A. There are some things that I don't know anything about, and others that I do.

Q. You don't know anything about this, do you?

A. I know I received some of the percentage.

Q. All you know is that you received some money from the Central Company?

A. Yes; and it came through Pullman.

Q. How do you know that?

A. I took the Central's word for it. They would not have paid me if they hadn't got it from him.

Q. You received some moneys from the Central Company, which they said they got from Pullman?

A. Yes, sir.

Q. How much money did you receive from the Central Company. on that account?

A. At the rate of twelve per cent. on the stock that he got.

Q. Who got?

A. Pullman.

Q. How much money did you get?

A. I got twelve per cent. on all I owned on stock in the Central.

Q. How much money did you get?

A. Twelve per cent. on what I owned.

Q. How much did you own?

A. I didn't own a great deal. I didn't own as much as I ought to.

Q. How much did you own?

A. I don't know that I am compelled to tell that.

Q. Do you decline to tell how much you own?

A. I own some $20,000 or $30,000 worth—$20,000 worth.

Q. Where did you get that?

A. From the Central Transportation Company.

Q. What was the consideration—what did you pay for it?

A. They had my patent—the use of my patent.

1869 Q. When did you get that?

A. I can't tell you now; it was when the agreement was made. I got that twelve per cent. right along.

Q. Was there an agreement in writing between you and the Central Transportation Company?

A. No; no further than transferring the patent at the time it was transferred.

Q. How much stock of the Central Transportation Company did you ever own at one time?

A. $20,000.

Q. Why did you say a moment ago that the consideration for the transfer of that patent to the Central Company was $200,000?

A. That wasn't all mine. There were others in the concern besides me. E. C. Knight was one. He was the main man in it.

Q. Who assigned this patent to the Central Company?

A. I did, I suppose, and E. C. Knight.

Q. Who was the person, or who were the persons, who assigned this patent No. 29137 to the Central Transportation Company?

A. Myself, Mr. E. C. Knight and W. C. Stevenson, I suppose—us three. It belonged to us at the time.

Q. The consideration, so far as you can recollect, was how much?

A. That I can't tell you. I think it was $200,000.

Q. Do you recollect specifically?

A. No; not exactly. I can't exactly remember the full amount.

Q. How much of an interest did you own in that patent at the time it was assigned to the Central Transportation Company?

A. I owned one-tenth of it.

Q. The consideration that moved you and your associates at the time the patent was transferred to the Central Company was a consideration in stock, was it not, of the Central Company?

A. Yes, sir.

1870 Q. Do you know whether any other property passed from you, Mr. Knight and Stevenson, as part of the property that the Central Transportation Company got, in consideration for which they gave the $200,000, or whatever the amount was, of their stock?

A. They got whatever cars they had. They had a number of cars on hand, ten or a dozen, I suppose.

Q. Is it not the fact that the consideration moving from you to them, for which $200,000 of stock of the Central Company, or whatever it was, was issued to you and your associates, was a great deal of their property, such as passenger cars, passenger equipment, and also this patent?

A. The patent and these cars that they had on hand; I think there were some ten or eleven cars; they belonged to E. C. Knight, myself and Stevenson. When they consolidated with Woodruff then they all went together, and that formed the Central Transportation Company.

Q. You never assigned your interest in the patent to anybody excepting to the Central Transportation Company?

A. That is all, I think. I had nothing to do with making out those papers.

Q. What did you do after you got the letters patent from the Government at Washington?

A. I went to work and built a lot of cars at Murphy & Allison's—built two at Wilmington; we built seven or eight at Murphy & Allison's. I shipped them to Lynchburg, Va.

Q. You never assigned your patent, or a part interest in it, to anybody until you joined in the assignment of the property and the patent which you, Knight and Stevenson made to the Central Company, did you?

A. I think there were ten cars which they had built; two were sent down to Lynchburg, Va., and two out to Indianapolis; and

there was three, I think, run on the Philadelphia, Wilmington and Baltimore road—three or four—I don't remember which.

Q. Who owned those cars?

A. They belonged to E. C. Knight & Co.

Q. Who were E. C. Knight & Co.?

1871 A. Stevenson, Knight and myself. We owned them until they were transferred to the Central Transportation Company.

Q. Were you in partnership with Mr. Knight and Mr. Stevenson?

A. Only in the cars.

Q. Were you in partnership with them as owners of the patent?

A. I was interested in the cars throughout.

Q. Were you in partnership with them in the ownership of this patent—did you ever assign any interest in this patent to them or either of them?

A. No.

Q. Then you kept the sole ownership of this patent?

A. The patent was mine, and we worked together.

Q. How did you work together?

A. Mr. Knight furnished the capital. He was the moneyed man.

Q. You furnished the patent?

A. Yes, sir. I got ten per cent. out of the cars.

Q. Then, keeping that status for some time, you three subsequently assigned all the properties that you had made under the patent, consisting of sleeping cars, and assigned also the patent to the Central Company; is that so?

A. We did after the consolidation with Woodruff. Woodruff had cars running on the Pennsylvania road—a number of them. We consolidated them, and the two parties then formed the Central Transportation Company.

Q. I would like to know a little more definitely the consideration that moved to you from the Central Transportation Company for transferring that patent?

A. I got my interest, ten per cent.; that is all I got out of it, $20,000.

Q. You had the sole ownership of the patent, had you not?

A. Yes, sir.

Q. How much interest did you have in those ten cars?

A. My interest went in with the patent.

1872 Q. How much interest, however, did you have in those cars? Did you have one-tenth?

A. It was all together.

Q. Did you have one-tenth interest in those cars?

A. One-tenth altogether of the whole thing.

Q. Then you owned one-tenth interest in those ten cars?

A. Yes, sir.

Q. You owned in severalty the patent?

A. Yes, sir; the patent was mine.

Q. What other property was there besides cars and equipment and the patent that you assigned to the Central Transportation Company in this paper?

A. There was no other that I know of, except the cars and the patent.

Q. Those cars were fully equipped, were they not?

A. Yes, sir.

Q. Do you remember how much it cost you to build them?

A. About $10,000 apiece, I think.

Q. That was before they were equipped, I suppose, with upholstery?

A. That was the builders' price of them.

Q. Then, after they were built and sent here, or perhaps before they were sent here, you had them upholstered?

A. Yes, sir.

Q. Did you upholster them yourselves?

A. We had it done.

Q. In addition to the $10,000 each for those cars, how much did you put into each car in the way of value?

A. I don't remember.

Q. Was it $2,000 or $3,000?

A. I can't tell you exactly what it was.

Q. Please give us some idea. You were conversant with the facts at that time. How much did you put in in addition to the builders' price of $10,000 for each car—that is, how much money?

A. I suppose about $1,000 more to each car.

Q. Then I suppose those cars, each of them, cost, on an average, to you and your associates perhaps $11,000?

1873 A. Yes, sir; about that. Then I don't know how many cars Woodruff had, but quite a number of cars, when they consolidated. He had them running on the Pennsylvania road, and one or two other roads, but they were stationary berths. They could not use our patent. He found that he could not get along without it, and made a proposition to E. C. Knight and us to consolidate the two, so as not to go to any trouble.

Q. Then you consolidated your interest?

A. Yes, sir; we consolidated with Woodruff.

Q. Did you form a company?

A. We formed what was called the Central Transportation Company.

Q. Do you know how much stock you issued?

A. I don't remember anything about that now, it has been so long ago.

Q. Who were the corporators?

A. I can't tell you that. E. C. Knight, Stevenson, Woodruff and Dykeman, I think, was in it at the time. Dykeman was with Woodruff, I think, on the Pennsylvania road and some of those Western roads. There was quite a number of cars running. It has been so long ago that I haven't bothered much about it.

Q. Wasn't the Central Transportation Company really Woodruff & Co., and didn't you and your associates assign certain property to it, namely, certain cars and this patent that you referred to; isn't that the fact?

A. Yes, sir.

Q. Then when you say that you and your associates consolidated with Woodruff, you mean merely that you and your associates assigned your property, whatever it was, to that company, which, in effect, caused the consolidation of interests?

A. It was assigned to the Central Transportation Company; I had nothing to do with any other company outside of the Central.

Q. I suppose you have always had a sort of fraternal interest in this patent since that time, so as to watch its career, have you?

1874 A. I have had an interest in looking after it sometimes, although I have had no interest in it at all for a number of years.

Q. Do you know its relation to other patents?

A. I had the patent renewed in 1874 or 1875.

Q. Why did you have it renewed?

A. Because they wanted it.

Q. Who wanted it?

A. Pullman; I had it renewed for Pullman.

Q. You made application, did you?

A. The way it was done, I was down in North Carolina at the time and he wrote to me—lawyers in New York, Wilson Brothers; I think they are lawyers, though I don't remember that, for it has been so long ago—if I had any objection to having the patent renewed, and I said no; and they had it renewed and sent the papers on. I suppose he paid for it; I didn't pay for it.

Q. I suppose you do not know what relation as to novelty of invention this invention of yours had to other similar inventions, do you?

A. No, sir. I know that they are using the same thing in the cars now today.

Q. And they are using a great many other things besides your patent, are they not?

A. They are using stationary bunks. They can't use anything like that on a car. They can't fasten anything to the side of a car that will work.

Q. How do you know that?

A. I know it because they can't do it, and haven't done it, and are not doing it today.

Q. Do you mean to say that your patent is the only patent being used today to fasten the bunk to the side of the car?

A. Yes, sir.

Q. What is your business now?

A. Carpenter and builder.

Q. Where?

A. Uptown, at 1831 North Eighteenth.

Q. What class of work do you do?

A. I am a carpenter and builder of houses.

1875 Q. Do you build houses yourself?

A. Yes, sir.

Q. Are you a contractor?

A. Yes, sir.

Q. How long is it since you have built a sleeping car?

A. I have never built a sleeping car. I superintended them wh
they were building.

Q. How long is it since you have had anything to do with t
sleeping-car business?

A. Since about 1863 or 1864—somewhere along there; I did
have anything to with them after that.

Q. So that you have had nothing to do with sleeping cars, or t
sleeping-car business, since 1864?

A. Not in the way of building. I superintended them while th
were building when I was there.

Q. When was it that you ceased to have any connection with t
sleeping-car business in any way?

A. I think I sold out my stock in 1872 or 1873, all the stock
had.

Q. That was after the property was leased to Pullman?

A. Yes, sir.

Q. Between 1863 and 1872 what were you doing?

A. I can hardly tell you. I have been doing so much. I ha
been building, In 1872 I built the North Penn depot, at the Nob
street wharf, for the North Penn railroad. I couldn't follow that u
for I don't know where I was half the time—in California, Colora
and everywhere else.

Q. You had no active connection with sleeping cars or sleepin
car business excepting as a stockholder of the Central Company af
1864, did you?

A. It was somewhere about that time.

Q. When were you last in a sleeping car?

A. I couldn't tell you. It has been about a year ago, I guess.

Q. Have you had your attention directed to inventions in conn
tion with the sleeping-car business?

A. Yes, sir; I know that they can't get along without th
hinge.

1876 Q. Where did you get that idea?

A. Because they don't do it. They would have done it
they could, but they don't. Pullman would have done if he cou

Q. How do you know they don't do it?

A I know that they haven't got any cars. Such was the case l
year. You go on the Pennsylvania or any of the roads where Pu
man has a car, and he has got that hinge.

Q. What sleeping car did you take last year?

A. Between here and Baltimore, I think it was.

Q. What car was it?

A. Oh, I couldn't tell you that, of course; it has been too f
back; of course I couldn't remember the number of cars. Pullma
can't get along without that hinge.

Q. Then you don't recollect the name of the sleeping car that y
were in last?

A. No, sir; it was at night, and I wasn't going outside to look
the number.

Q. When were you in a sleeping car the next time preceding th
occasion when you went from here to Baltimore?

A. I couldn't tell you.

Q. Was it five or ten years preceding?

A. It might have been five or ten years; I don't know; I couldn't tell you that.

Q. You don't recollect, I suppose, the cars that you were in upon those occasions, or any of the occasions when you were upon sleeping cars.

A. No, sir.

Q. Then I suppose all that you wish to testify is that upon the occasions in the last five or ten years when you have gone in sleeping cars, you saw what you supposed was the use of your invention?

A. Yes, sir; and I can go in them today and see the same thing.

Q. That is to say, in those sleeping cars that you were in?

A. Any car that you go into today has that same thing in it.

1877 Q. How many sleeping cars have you been in in the last fifteen years?

A. I haven't been in a great many, but I have been in some.

Q. Have you been in five?

A. How can I tell you that?

Q. Have you been in five sleeping cars in the last fifteen years?

A. I might have been in five, and I might have been in ten.

Q. Have you been in five sleeping cars in the last fifteen years?

A. Yes, I think I have.

Q. State any of the five sleeping cars, or between what points were you in those five sleeping cars?

A. I can't tell you that. Between here and Pittsburgh, and between here and Baltimore, and half a dozen roads. I didn't make a memorandum of these things, and I didn't expect anything like this would come. I never thought of being questioned in this way, or I might have made a memorandum, but I know one thing—that Pullman can't get along without that hinge and if he could he would have done it before this. He would not have bothered with the Central Transportation Company if he could have got along without it.

Q. The basis for your information is the experience that you have had since 1864, in the last thirty years, in those sleeping cars; is that the fact?

A. Yes, sir; Pullman can't get along without that patent, or he would have done it long ago if he could. According to the contract he made with them, he had a right to go on and use it, but when he failed with his contract, that was a different thing. All the sleeping cars made before that were box cars. You couldn't make a day car out of any of them.

Q. I hand you letters patent and schedule annexed thereto, No. 29137, issued to William A. Brown, July 17th, 1860, and ask you what you understand at this late date your invention was?

A. It was the hinging of a second couch to the top or the side of the car—the top and the side.

Q. Do you wish to state as a matter of fact that there have
1878 been no improvements in sleeping cars made since your patent was issued to you which effectively render useless your patent?

A. There has been no invention to interfere with it. There have been improvements on cars, but not in that point. There have been improvements made on cars, but they can't get over that point, and haven't done it; if they could they would have done it.

Q. You state that only upon the information that you have derived from having had access to five or ten cars within the last thirty years; is that so?

A. Five or ten years, and I know that they have got nothing else in any of them.

Q. From what knowledge do you state that?

A. Only from what I know, from hearsay, and from what I have seen myself. I have been in a number of cars, and it was always the same thing—a hinge.

Q. Do you watch the Patent Office Gazette or take it?

A. No; I never bother much about that.

Q. You do not have your attention directed to current inventions, do you?

A. Not any more; no, sir.

Q. You have not for the last thirty years, have you?

A. No; I have always felt more or less of interest in them.

Q. Rather less of an interest than more of an interest since you parted with your title?

A. Well, of course, I have no claim on it; at the same time I feel an interest in it the same as anybody else would.

Redirect examination.

By Mr. PRICHARD:

Q. As I understand you, you say that your patent was the bottom patent in the construction of cars having a couch hinged to the side of a car?

A. Yes, sir; the middle couch. They used the seats long years
ago. They can make a couch over the seat, anybody can, but they could.n't make this couch to hinge to the top or to the sides.
1879 They could push them up and hold them up by other means, running them up with weights. There was a patent in Detroit where they run the second couch up with weights, but you have got to have the weight of the couch in lead or something else.

Q. I understand you to say that after the lease to the Pullman Company Mr. Pullman requested you to renew this patent—to make application—and you did that?

A. Yes, sir.

Q. Can you remember the date?

A. I think it was in 1874 or 1875; I am not positive about that. I was down in North Carolina at the time, and his lawyer in New York wrote to me, if I remember the name, I think it was Wilson & Bro. who were his lawyers there; they wrote to me if I had any

objection to having it renewed, and of course it was no interest to me much, and I had it renewed, and I suppose he paid for it; I know I didn't pay for it.

Q. You have said that there were some ten cars that you, Mr. Knight and Mr. Stevenson had had built which were turned over to the Central Transportation Company?

A. Yes, sir; that is, they first consolidated with Woodruff. He had a number of cars, I don't know how many, on the Pennsylvania road and out West. They consolidated and formed the Central Transportation Company.

Q. That was a number of years before the lease to Mr. Pullman, was it not?

A. Yes, sir; they run that way for some time.

Q. Do you recollect when it was that these patents were assigned to the Central Transportation Company—did the Central Transportation Company buy them at once, or did they pay royalty for some years?

A. I think they paid royalty on them.

Q. Then subsequently they bought them, did they not?

A. I think so; yes, sir. It has been so long ago that I can't remember exactly how the thing worked. Another thing, I did not have much to do with it; Knight and Stevenson did all that business.

Q. They managed the negotiations?

A. Yes, sir; I didn't have so much to do with that.

1880 Recross-examination.

By Mr. WINTERSTEEN:

Q. Do you know what royalty was paid from patents?

A. No, I don't remember now. It was transferred to the Central. The Central Transportation Company paid a percentage every quarter, I think, or every six months; I don't remember now exactly.

The patent shown to the witness, and which has been identified by him, together with schedules annexed thereto, is as follows:

THE UNITED STATES OF AMERICA:

No. 29137.

To all to whom these letters patent shall come:

Whereas, William A. Brown, of Philadelphia, Pennsylvania, has alleged that he has invented a new and useful improvement in couches for railroad cars, which he states has not been known or used before his application; has made affirmation that he is a citizen of the United States, that he does verily believe that he is the original and first inventor or discoverer of the said improvements, and that the same hath not, to the best of his knowledge and belief, been previously known or used; has paid into the Treasury of the United States the sum of thirty dollars, and presented a petition to

the Commissioner of Patents, signifying a desire of obtaining an exclusive property in the said improvement, and praying that a patent may be granted for that purpose.

These are therefore to grant, according to law, to the said William A. Brown, his heirs, administrators, or assigns, for the term of fourteen years from the seventeenth day of July, 1860, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement, a description whereof is given in the words of the said William A. Brown in the schedule hereunto annexed, and is made part of these presents.

In testimony whereof, I have caused these letters to be made patent, and the seal of the Patent Office has been hereunto affixed.

1881 Given under my hand at the city of Washington, this seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty, and of the Independence of the United States of America the eighty-fifth.

JACOB THOMPSON,
[SEAL.] *Secretary of the Interior.*

Countersigned and sealed with the seal of the Patent Office.

PHILIP F. THOMAS,
Commissioner of Patents.

No. 29137.

The Schedule Referred to in These Letters Patent and Making a Part of the Same.

To all whom it may concern:

Be it known, that I, William A. Brown, of the city of Philadelphia and State of Pennsylvania, have made a new and useful improvement in the arrangement of couches in railroad cars, and I do hereby declare the following to be a full, clear and exact description of the same, reference being had to the annexed drawings making a part of this specification, in which—

Fig. 1 represents the mode of forming the lower couch. Figs. 2 and 3 the mode of forming the upper couches. Figs. 4 and 5 are different views of the same. Fig. 6 is an end view, showing the upper couch as supported. Fig. 7 is a side view of the same. Figs. 8 and 9 represent the support detached. Similar letters of reference refer to similar parts.

The bottom of each seat is separated near the middle and hinged together as at A. The one-half is to be provided with springs and stuffed upon its under side so as to form a pillow when bent back. The manner in which this lower couch is formed is as follows: The back of the seats being reversed as in all sleeping cars, the hinged portions of the seat are thrown back, the bottom of the back

1882 rests on or against the edges of the same. A sacking bottom B is then attached by holes to a series of hooks *c* on the one seat, and also to a series of hooks *c*, *c* on an axis attached to the

opposite seat. The object of this axis is to tighten the sacking bottom. Upon the sacking bottom thus firmly stretched between the seats a mattress D, D is placed.

By the back of the seats resting against the portion of the bottom which is thrown back increased length is given to the couch. The support for the second couch is formed as follows: A support G is slid out from the side of the car at a height sufficient to clear the back of the seat. These supports G are made to turn up or down in the side of the car between the framework, one end to work in a groove or rabbit. A post rod or brace H, connected or disconnected with the support G, to turn from the side, bottom or top of the same to the floor, or to turn up from the floor or side, or by supporters from the ceiling. The second couch is brought from the ceiling in the following manner. The couch being provided with hooks or pins on the side or end of the same to catch against brackets, and is turned down, and the lower edge becomes supported upon the supporters, and the upper edge, being loosened from the brackets, falls down also upon the supporter. These couches may also be supported by rods fastened on their under side by a hinge joint and resting against the floor. The fifth single couch, or, more properly speaking, the third berth, works down through the brackets in the same manner as the middle couch. It is immaterial in what way the couches are lowered from the ceiling. X is a table working out from the panel between the windows in a manner similar to that in which the supports G are drawn out.

Having thus described my improvement, what I claim as my invention and desire to secure by letters patent is supporting the couch by supports G drawn from the side of the car when used in combination with the posts H, substantially as herein described.

WILLIAM A. BROWN.

Witnesses:

J. G. MINI CHILD.
F. D. BAQUET, A. B.

1883 THE UNITED STATES OF AMERICA:

No. 2975; whole No. 33979.

To all to whom these letters patent shall come:

Whereas, William A. Brown, of Philadelphia, Pennsylvania, has alleged that he has invented a new and useful improvement in railroad-cars ventilators, which he states has not been known or used before his application; has made affirmation that he is a citizen of the United States, that he does verily believe that he is the original and first inventor or discoverer of the said improvement, and that the same hath not, to the best of his knowledge and belief, been previously known or used; has paid into the Treasury of the United States the sum of thirty-five dollars, and presented a petition to the Commissioner of Patents, signifying a desire of obtaining an exclusive property in the said improvement, and praying that a patent may be granted for that purpose.

These are therefore to grant, according to law, to the said William A. Brown, his heirs, administrators or assigns, for the term of seventeen years from the twenty-fourth day of December, 1861, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement, a description whereof is given in the words of the said William A. Brown in the schedule hereunto annexed, and is made part of these presents.

In testimony whereof, I have caused these letters to be made patent, and the seal of the Patent Office has been hereunto affixed.

Given under my hand at the city of Washington, this twenty-fourth day of December, in the year of our Lord one thousand eight hundred and sixty-one, and of the Independence of the United States of America the eighty-sixth.

CALEB B. SMITH,
[SEAL.] *Secretary of the Interior.*

Countersigned and sealed with the seal of the Patent Office.

D. P. HOLLOWAY,
Commissioner of Patents.

1884 No. 2975.

The Schedule Referred to in These Letters Patent and Making Part of the Same.

To all whom it may concern:

Be it known, that I, William A. Brown, of the city of Philadelphia, in the State of Pennsylvania, have invented a new and useful improvement in ventilators for railroad cars, and I do hereby declare that the following is a full, clear and exact description of the construction and operation of the same, reference being had to the annexed drawings making a part of this specification, in which Figs. 1 and 2 are vertical longitudinal sections of the said improved ventilator applied, like parts when in the different figures, being indicated by like letters.

My invention has a twofold object, *i. e.*, the introduction of fresh and the discharge of impure air through the roof of a car in motion on the track, and consists in constructing and applying substantially, in the manner hereinafter described and specified, a ventilator, so that during the forward motion of the car to which it is applied a regular current of fresh air can be introduced thereby, at a point near the forward end of the car, and the impure air continuously discharged at a point near the rear end of the same.

In the drawings, A represents a central longitudinal section of the roof of a car; B, a hollow cylinder of sheet metal, which has a hollow conical frustrum, C, fixed at each end, and is supported in a fixed horizontal position, and longitudinally in relation to the car, at a short distance above the roof A of the same by means of a short, hollow cylinder C, which is fixed vertically in the said roof, so as to afford through it and the cylinder B above an open communication between the interior of the car and the external air; D is a

short hollow cylinder, which is adjustably fixed in the rear of cylinder B, and provided with a deflecting partition *d'*, constructed and secured therein so as to produce a spiral passageway of two or three turns from one end to the other of the same. The outer ends of the frustra *b'b'* are covered each by a diaphragm E of wire gauze, to preclude sparks from the engine.

1885 The lower end of the vertical cylinder C is fitted with an adjustable valve, consisting of a curved disk F attached to a sliding ring *f* in the cylinder by means of wire stems *f f*, or in any other suitable manner, so that the mouth of the cylinder C may be either closed or opened at pleasure by adjusting the said valve by hand from the inside of the car.

Operation.—One of these ventilators being fixed in the roof near each end of the car in the manner described, and so also that the ends which respectively contain the adjustable cylinders D shall directly face each other, as seen in Fig. 2. The forward motion of the car will cause a constant current of fresh air to pass directly through each ventilator, and the valves F F of the cylinders C C being open, the principal portion of the air entering the forward ventilator will be deflected in consequence of the resistance of the spiral partition *d'* into the car through the vertical cylinder C, as indicated by the arrows 1, 1, its volume being in accordance with the size of the valve-opening in the latter, whilst at the same time the current of air which is forced through the rear ventilator is deflected by the spiral passageway in the cylinder D in such a manner that, in leaving the same, it passes obliquely upward and over the mouth of the vertical cylinder C, producing an exhaustive effect in the said cylinder C, and consequently a regular outward flow through it of the impure air of the car, as indicated by the arrows 2, 2 in Fig. 2.

The apparatus thus constructed and applied will therefore always be in condition for action in whichever direction the car may be required to run, is entirely effective for the purpose designed, and is not liable to derangement in use.

Having thus fully described my improved ventilator for railroad cars, and shown the manner in which the same is to be applied and used, what I claim as new therein, and desire to secure as my invention by letters patent, is a ventilator consisting of the horizontal cylinder B with its conical frustra *b' b'*, the interior spiral passage formed by the partition *d'* in the rear end of cylinder B, and the vertical cylinder C with its adjustable valve F, the said parts being constructed and combined together with each other substan-

1886 tially as described, and applied near each end of the roof A, so as to operate in combination with the car in motion on a track in the manner set forth and described, and for the purposes specified.

WM. A. BROWN.

Witnesses:
BENJ. MORISON.
B. F. SHATTUCK.

Counsel for plaintiff in cross-bill offer in evidence seventeen years' statement of Pullman's Palace Car Company, showing cost of assets, amount of liabilities, gross earnings and expenses at the close of each fiscal year since formation of the company in 1868 to 1884 inclusive, and produces printed copy thereof, as follows, the same being marked "Exhibit A, June 12th, 1893:"

(Here follows table marked p. 1887.)

1888 (Counsel for Pullman's Palace Car Company objects to this, in the first place as irrelevant, and, in the second place, reserving the right to require the original of the statement to be substituted for the printed copy, if, upon comparison, the printed copy should be found to be not a true copy of the original issued by the Pullman Company.

Counsel for plaintiff in cross-bill also offers in evidence annual statement of Pullman's Palace Car Company for 1884, 1886 and 1887, and produces printed copies thereof, to which counsel for Pullman's Palace Car Company make the same objection and same reservation.)

Said papers are marked "Exhibits B, C and D, June 12th, 1893," and are as follows:

(Ex. B, June 12th, 1893, S. B.)

Annual Statement, Pullman's Palace Car Company, Fiscal Year Ending July 31, 1884.

Income account.

Revenue.

Earnings (leased lines included)	$3,424,279 58	
Our proportion of earnings of other sleeping car associations controlled and operated by this company	488,231 01	
Patent royalties	27,709 00	
Manufacturing and other profits, rentals, etc	516,237 84	
		$4,456,457 43

Disbursements.

Operating expenses, including legal expenses, general taxes and insurance (leased lines included)	$1,110,932 10	
Maintenance of upholstery and bedding (leased lines included)	205,455 04	
Our proportion of operating expenses and maintenance of upholstery and bedding in cars of other sleeping car associations controlled and operated by this company	136,556 00	
Rental of leased lines	264,000 00	
1889 Interest on bonds	171,466 39	
Dividends on capital stock	1,339,621 00	
Profit and loss, including interest, discount, and exchange	35,732 50	
		3,263,763 03
Surplus for the year—being excess of revenue over ordinary disbursements, carried to credit of income account		$1,192,694 40

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

Financial Statement.

Assets.

669 cars and equipments, including franchises—cost.	$11,326,337 76	
*Amount invested in other car associations, controlled and operated by this company	3,339,089 34	
Stock in Union foundry and Pullman car-wheel works	250,000 00	
Other stocks and bonds	285,986 50	
Real estate and plant, Detroit shops	381,385 17	
Real estate and plant, 508 acres of land, Chicago car works, homes for workmen, and other improvements, at Pullman, Ills	6,434,828 95	
Real estate and plant, St. Louis shops	115,007 28	
Plant, Mantua shops	15,973 13	
Real estate and new Pullman building, Chicago	649,252 44	
Real estate, Cook county	22,320 19	
Lumber	702,294 75	
Other construction material and operating supplies, including cars in process of construction	1,527,756 91	
Patents, United States and foreign	184,633 43	
Furniture and fixtures in the several offices of the company—cost	71,679 97	
Balance of accounts receivable and payable	592,676 18	
Cash	270,160 41	
		$26,169,382 41

1890 *Liabilities.*

Capital stock issued, 159,244 shares, $100 each	$15,924,400 00	
Fractional scrip	400 00	
		$15,924,800 00
Outstanding bonds:		
8 per cent. currency, debenture bonds; third series, due Feb. 15, 1887	$445,000 00	
Fourth series, due August 15, 1892	820,000 00	
7 per cent. currency debenture bonds, due October 15, 1888	955,000 00	
7 per cent. sterling debenture convertible bonds, due April 1, 1885	49,500 00	
		2,269,500 00
Amount received from sale of old cars, leased from Central Transportation Co.		441,370 49
Total		$18,635,670 49
Surplus—invested in the assets of the company	$8,019,172 93	
Less written off during the year:		
For loss on old cars sold or destroyed, replaced by new, etc	$62,579 47	
For balance of account for rebuilding and remodeling cars into latest standard Pullman cars	15,666 94	
For estimated depreciation of cars out of regular service, but used for temporary purposes	100,000 00	
For doubtful accounts	307,214 60	
	485,461 01	
		7,533,711 92
Embraced in the following accounts:		
Depreciation account, (franchises, patents, &c.)	$1,100,000 00	
Income account	6,433,711 92	
	$7,533,711 92	
		$26,169,382 41

* Total number of cars operated, including association cars, 1,148.

1891 Indorsed upon back as follows:
Directors.—Geo. M. Pullman, Chicago; John Crerar, Chicago; Marshall Field, Chicago; J. W. Doane, Chicago; Norman Williams, Chicago; O. S. A. Sprague, Chicago; Henry C. Hulbert, New York.

(Ex. C, June 12th, 1893, S. B.)

Annual Statement, Pullman Palace Car Company, Fiscal Year Ending July 31st, 1886.

Income account.

Revenue.

From earnings of cars	$5,075,382 75	
" patents	5,485 00	
" manufacturing, rentals, dividends, interest, &c.	542,644 35	
		$5,623,512 10

Disbursements.

Operating expenses, including maintenance of upholstery and bedding, legal expenses, general taxes and insurance	$2,057,627 39	
Proportion of net earnings paid other interests in sleeping car associations controlled and operated by this company	802,175 52	
Rental of leased lines	66,000 00	
Interest on debenture bonds	168,050 00	
Interest on capital stock	1,274,028 00	
Contingency reserve	100,000 00	
		4,467,880 91
Surplus for the year—being excess of revenue over ordinary disbursements, carried to credit of income account		$1,155,631 19

Financial Statement.

Assets.

691 cars and equipments, including franchises	$11,436,979 13	
*Amount invested in other car associations controlled and operated by this company	3,777,921 46	
1892 Real estate and plant, 508 acres of land, car works, homes for workmen and other improvements at Pullman, Ill	6,632,210 92	
Real estate and Pullman building, Chicago	984,908 71	
Real estate, Cook county	22,630 14	
Real estate and plant, Detroit shops	380,530 61	
Real estate and plant, St. Louis shops	119,570 18	
Lumber and other construction material and operating supplies, including cars in process of construction	2,242,265 26	
Patents	87,238 18	
Furniture and fixtures in the several offices of the company	101,864 58	
Stock in Union foundry and Pullman car-wheel works	$437,500 00	
Other stocks and bonds	2,317,545 16	
Receivers' certificates	27,089 08	
Cash	226,401 25	
	3,008,535 49	
		$28,794,654 66

*Total number of cars operated, including association cars, 1,193.

Liabilities.

Capital stock issued, 159,272 shares, par value $100 each		$15,927,200 00	
Outstanding bonds; 8 per cent. currency debenture bonds:			
Third series, due February 15, 1887	$445,000 00		
Fourth series, due August 15, 1892	820,000 00		
7 per cent. currency debenture bonds, due Oct. 5, 1888	955,000 00		
		2,220,000 00	
Balance of accounts receivable and payable		1,041,535 16	
Amount received from sale of old cars, leased from Central Transportation Co		441,370 49	
Total			$19,630,105 65
Surplus—invested in the assets of the company		$9,647,207 73	
Less written off during the year:			
For loss on old cars sold or destroyed, replaced by new, &c	$85,396 65		
For balance of account for rebuilding and remodeling cars into latest standard Pullman cars	197,262 07		
1893 For estimated depreciation of cars out of regular service, but used for temporary purposes	100,000 00		
For patents expired	100,000 00		
		482,658 72	
			9,164,549 01
Embraced in the following accounts:			
Depreciation account (franchises, patents, &c.)	$1,100,000 00		
Income account	8,064,549 01		
		$9,164,549 01	
			$28,794,654 66

Indorsed upon back as follows:

Directors.—Geo. M. Pullman, Chicago; John Crerar, Chicago; Marshall Field, Chicago; J. W. Doane, Chicago; Norman Williams, Chicago; O. S. A. Sprague, Chicago; Henry C. Hulbert, New York.

(Ex. D, June 12th, 1893, S. B.)

Annual Statement, Pullman's Palace Car Company, Fiscal Year Ending July 31st, 1887.

Income account.

Revenue.

From earnings of cars	$5,621,017 70	
" patents	6,769 46	
" manufacturing, rentals, dividends, interest, &c.	813,144 65	
		$6,440,931 81

Disbursements.

Operating expenses, including maintenance of upholstery and bedding, legal expenses, general taxes, and insurance	$2,224,806 83	
Proportion of net earnings paid other interests in sleeping car associations controlled and operated by this company	969,896 13	
Rentals	66,000 00	
Interest on debenture bonds	159,150 00	
Dividends on capital stock	1,274,176 00	
Repairs of cars in excess of mileage	210,017 97	
		4,904,046 93
Surplus for the year—being excess of revenue over ordinary disbursements, carried to credit of income account		$1,536,884 88

1894 *Financial Statement.*

Assets.

667 cars and equipments, including franchises		$10,963,545 42	
*Amount invested in other car associations controlled and operated by this company		4,186,968 55	
Real estate and plant, 508 acres of land, car works, homes for workmen, and other improvements at Pullman, Ill.		6,961,771 45	
Real estate and Pullman building, Chicago		991,276 76	
Real estate, Cook county		22,797 04	
Real estate and plant, Detroit shops		385,573 28	
Real estate and plant, St. Louis shops		120,896 26	
Real estate and plant, Wilmington shops		116,967 95	
Lumber and other construction material and operating supplies, including cars in process of construction		3,316,285 13	
Patents		91,738 18	
Furniture and fixtures in the several offices of the Co.		107,136 90	
Stock in the Union foundry and Pullman car wheel works	$437,500 00		
Other stocks and bonds	1,442,589 32		
Receivers' certificates	25,020 33		
Cash	179,603 40		
		2,084,713 05	
Total assets			$29,349,669 97

Liabilities.

Capital stock issued, 159,272 shares, par value $100 each		15,927,200 00	
Outstanding bonds, 8 per cent. currency debenture bonds:			
Fourth series, due Aug. 15, 1892	$820,000 00		
7 per cent. currency debenture bonds, due Oct. 15, 1888	955,000 00		
		1,775,000 00	
Balance of accounts receivable and payable		613,348 90	
Amount received from sale of old cars, leased from Central Transportation Co.		441,370 49	
			18,756,919 39

1895 *Total Liabilities.*

Surplus—invested in the assets of the company		$11,041,673 89	
Less written off during the year:			
For loss on old cars sold or destroyed, replaced by new, &c.	$69,071 83		
For depreciation on cars transferred from "cars" and "equipments" account to account of other car associations controlled and operated by this company	237,625 10		
For balance of account for rebuilding and remodeling cars into latest standard Pullman cars	42,226 38		

*Total number of cars operated, including association cars, 1,260.

For estimated depreciation of cars out of regular service, but used for temporary purposes	$100,000 00		
		$448,923 31	
			$10,592,750 58
Embraced in the following accounts:			
Contingency reserve	340,240 00		
Depreciation account (franchises, patents, etc.)	1,100,000 00		
Income account	9,152,510 58		
		$10,592,750 58	
			$29,349,669 97

Indorsed upon back as follows:

Directors.—Geo. M. Pullman, Chicago; John Crerar, Chicago; Marshall Field, Chicago; J. W. Doane, Chicago; Norman Williams, Chicago; O. S. A. Sprague, Chicago; Henry C. Hulbert, New York.

Adjourned to 3 p. m., Thursday, June 14th, 1893.

1896 THURSDAY *June 15th*, 1893—11 a. m.

Present: The examiner, Colonel Bell, and Messrs. Prichard and Wintersteen, of counsel.

JOSEPH G. GOODMAN, having been duly sworn, was examined as follows:

By Mr. PRICHARD:

Q. You were at one time connected with the Central Transportation company?

A. I was; yes, sir.

Q. In what capacity and for what time?

A. As clerk, from about 1865 or 1866 until August 1st, 1872.

Q. Please look at the cash book of the Central Transportation Company, and state at what time the entries in the cash book ceased to be in Mr. Cottringer's handwriting.

A. Mr. Cottringer's entries appear to have ceased on February 28th, 1866.

Q. From that time down to what time are they in your handwriting?

A. They are in my handwriting from March 1st, 1866, to July 1st, 1872.

Q. Please look at the equipment and contracts account in the ledger, and state down to what time Mr. Cottringer appears to have kept that account, and when you commenced to make entries in it?

A. My first entry appears on April 11th, 1865. The entries in that account are in my handwriting, down to January 1st, 1870.

Q. Prior to the date when your entries commenced, in whose handwriting are the entries?

A. I identify them as all being in Mr. Cottringer's handwriting, with which I am very familiar.

Q. These entries made by you in the cash book and the ledger were made at what time and under what circumstances?

A. In the usual course of business, and at as convenient times after getting the accounts in as possible.

1897 Q. Then they were made in the course of the current business of the Central Transportation Company?

A. Yes, sir.

Q. Please explain the method of keeping the accounts of the Central Transportation Company with regard to construction and equipment.

A. We had a car account, and charged against each car the amount of expenditures on that car, in order to find out the absolute cost of the car. The accounts were all made up by vouchers, and transferred to an abstract, and from there to equipment and contracts account.

(Witness shown vouchers produced by Mr. Weckerly.)

Q. Do you recognize these as the kind of vouchers and abstracts which formed the basis of your accounts at that time?

A. Yes, sir; that is the way we made them up always. I can identify them from the outside, but I can identify my own all through, if you would like me to do so. (Examining same.)

Q. Looking at the bundles of vouchers shown you, can you recognize them generally as being vouchers that were presented at the time to the Central Transportation Company, and abstracts made up at the time?

A. Yes, though of course I cannot identify every particular one. Some of them are in my handwriting and some in Mr. Cottringer's. Generally, however, I recognize the abstracts as being abstracts and vouchers of the Central Transportation Company.

Cross-examination.

By Mr. WINTERSTEEN:

Q. When did you cease to be connected with the Central Transportation Company?

A. August 1st, 1872.

Q. What were your duties while you were connected with that company?

A. I was chief clerk of the company. The duties of chief clerk were to attend to all the financial part of the business, under the direction of the secretary and treasurer.

Q. Who was the secretary and treasurer?

A. Joseph F. Cottringer.

1898 Q. I suppose you knew nothing of the actual disbursements made by the officers of the company at the time that you were chief clerk?

A. I was thoroughly acquainted with them, so far as the vouchers were concerned.

Q. Your duties were not to disburse moneys?

A. No, sir, not in the sense of disbursing money; merely to fill out checks as a clerk would do.

Q. All the checks you filled out were by direction of the secretary and treasurer, Mr. Cottringer?

A. Yes, sir.

Q. You know nothing, I presume, about whether or not the moneys for which you were directed to fill out checks were actually used in making the payments in correspondence with the checks?

A. I should say that they were only used for that purpose.

(Question repeated.)

A. I should say that they were only used for the purpose for which they were intended.

Q. Before answering that question, I would like to know whether you had or have personal knowledge that those moneys were disbursed in accordance with the checks that you filled out?

A. As a general thing, I should say yes.

Q. What knowledge have you of that?

A. From the mere fact that we would get bills from these people; they would be approved by the officers of the company, visé-d by them, and passed into the treasurer for filling up the proper voucher, and there would be the filling up of the proper check for payment of the same and turning it over to them, and getting their proper receipt.

Q. Whose duty was it to make payments?

A. The secretary and treasurer's.

Q. Did you ever make any payments?

A. I have carried them around as a messenger would, by taking the payments to the people frequently.

Q. But your duties were to make entries in the books, were they not?

A. Yes, sir,

1899 Q. You were not a disbursing officer, and it was not part of your duty to make payments?

A. No, it was not my duty to make payments.

Q. Then you don't know, excepting as incidentally you may have carried checks to creditors, that the moneys were disbursed in accordance with the checks which you filled out.

A. No, I cannot say that I know personally any more than I have stated.

Redirect examination.

By Mr. PRICHARD:

Q. The receipts for these moneys did come under your care as clerk, did they not?

A. Yes, sir; as a general thing.

Q. So that, although you did not personally see the money drawn from bank, you do know that, in due course, the receipts came back, and they formed the basis of your subsequent entries?

A. Yes, sir; that is just it.

Q. You have spoken in your testimony-in-chief of a car account. State all you know about that, whether there is such an account in the books, because we could not find any car account.

A. My memory is, although it has been a good many years ago, that we had what we called a car book.

Q. Was it a separate book?

A. It was a separate book. It was a large book, as big as an ordinary ledger. In that we had pages devoted to cars, new cars in course of construction, and also repairs and renewals to old cars. In that was kept, I won't say a very accurate account, because we could not apportion it properly among those cars, there being so many cars in the shop at the same time, and we could not get it subdivided so closely as to make it what you might call an accurate account, but such a book was attempted to be kept with more or less degree of success.

Q. Have you any idea what became of that book?

A. I have not. To the best of my knowledge it was there when the lease was made to the Pullman's Palace Car Company,
1900 and after that time we had no occasion to look at it; I have not seen it since I probably made the last entry in it.

Mr. WECKERLY, having been recalled, was further examined, as follows:

By Mr. PRICHARD:

Q. Have you found among the books or papers of the Central Transportation Company the car book referred to by Captain Goodwin?

A. I have not. I will say this, that very diligent search has been made for a book of that kind, because we considered it at the start as of very great importance. Failing in finding it we caused the Pullman's Palace Car Company to produce their similar books for our inspection, which was done by the then vice-president, Mr. E. H. Goodman, but I have never been able to find such a book.

(Counsel for the Central Transportation Company calls upon counsel for Pullman's Company to produce the car-account book of the Central Transportation Company, if it is in the possession of Pullman's Palace Car Company.

Mr. Wintersteen desires to say, in response to the above call, that in his judgment the book, as evidence of any issue in this cause, is irrelevant, and unless required by the court, he does not feel called upon to produce it; he, however, personally knows nothing about it, or whether or not such a book was ever in existence or was ever turned over to the Pullman Company. The call for the book is irrelevant.)

By Mr. PRICHARD:

Q. Please produce the minute book of the Central Transportation Company subsequent to the one which you have already identified, and state between what dates it was kept?

A. I produce minute book covering minutes of meetings of the Central Transportation Company between April 18th, 1870, and March 21st, 1887.

Q. In whose handwriting are those minutes?

A. In the handwriting of Mr. Cottringer, Mr. Obdyke and myself.

1901 Q. In whose handwriting are the minutes of April 19th, 1880, and November 22d, 1881?

A. They are both in the handwriting of J. F. Cottringer.

Mr. Prichard offers in evidence following minutes:

"April 19th, 1880.--Resolved, That, in compliance with the lease of the Central Transportation Company to the Pullman's Palace Car Company, a committee of five be appointed to join with the Pullman's Palace Car Company in taking up the subject of a renewal of the contract with the Pennsylvania Railroad Company, and any other matters that may arise in connection with the same, for the promotion of the interests of the company."

"Further resolved, That the secretary of the company be instructed to officially notify the president of the Pullman's Palace Car Company of the action of the board and the appointment of said committee."

"November 22d, 1881.—On motion of Mr. Crawford, seconded by Mr. Lane, it was resolved that Mr. Samuel McClary, Jr., and Mr. W. H. Woolverton be chosen to fill the vacancies caused by the withdrawal of Mr. Pierson and Mr. Milne from the committee appointed to meet the Pullman's Palace Car Company whenever necessary to assist them in a renewal of contracts with the Pennsylvania Railroad Company, and any other matters connected therewith, said committee having been appointed April 19th, 1880."

(Objected to by Mr. Wintersteen as irrelevant, incompetent and immaterial.)

In connection with this offer Mr. Prichard calls upon counsel for the Pullman's Palace Car Company to produce the notice sent to that company in accordance with the resolution of April 19th, 1880.

In connection with the offer of the annual statements of the Pullman's Palace Car Company made at the last meeting, Mr. Prichard offers in evidence two additional statements of said company, one for the year ending July 31st, 1889, and the other for the year ending July 31st, 1890, to which Mr. Wintersteen makes the same objection and the same reservation as was made in regard to similar offers at the last meeting.

1902 Said papers are marked "Exhibits E and F, June 15th, 1893," and are as follows:

(Ex. E, June 15th, 1893, S. B.)

Annual Statement, Pullman's Palace Car Company, Fiscal Year Ending July 31, 1893.

Income account.

Revenue.

From earnings of cars	$6,825,954 95	
" patents	8,327 43	
" manufacturing, rentals, dividends, interest, &c.	1,469,013 12	
		$8,303,295 50

Disbursements.

Operating expenses, including maintenance of upholstery and bedding, legal expenses, general taxes, and insurance	$3,070,779 10	
Proportion of net earnings paid other interests in sleeping car associations controlled and operated by this company	920,965 66	
Interest on debenture bonds	79,527 10	
Dividends on capital stock	1,795,638 00	
Repairs of cars in excess of mileage	84,915 45	
Contingency reserve	100,000 00	
		6,051,765 31
Surplus for the year—being excess of revenue over ordinary disbursements, carried to credit of income account		$2,251,530 19

Financial Statement.

1,066 cars and equipments, including franchises		$16,736,122 90	
*Amount invested in other car associations controlled and operated by this company		4,955,845 30	
Real estate and plant, 508 acres of land, car works, homes for workmen, and other improvements at Pullman, Ill.		7,266,489 34	
Real estate and Pullman building, Chicago		992,878 76	
Real estate and plant, Detroit shops		397,892 96	
Real estate and plant, St. Louis shops		121,328 06	
1903 Real estate and plant, Wilmington shops		125,639 45	
Lumber and other construction material and operating supplies, including cars in process of construction, &c		3,347,302 80	
Patents		98,827 13	
Furniture and fixtures in the several offices of the company		112,332 38	
Stock in Union foundry and Pullman car-wheel works	$437,500 00		
Other stocks and bonds	2,720,355 84		
Receivers' certificates	10,000 00		
Cash	356,063 92		
Demand loans	1,418,288 89		
Balance of accounts receivable and payable	1,685,824 22		
		6,628,032 87	
Total assets			$40,782,691 95

Liabilities.

Capital stock issued, 250,000 shares, par value $100 each	$25,000,000 00	
Outstanding bonds, 8 per cent. currency debenture bonds, fourth series, due August 15th, 1892	820,000 00	
Amount received from sale of old cars, leased from Central Transportation Co	441,370 49	
Total liabilities		$26,261,370 49

*Total number of cars operated, including association cars, 1,999.

Surplus—invested in the assets of the company.....		$14,905,023 23	
Less written off during the year:			
For loss on old cars sold or destroyed, replaced by new, etc.....	$58,402 61		
For depreciation on cars transferred from "cars and equipments" account to account of other car associations controlled and operated by this company.....	92,702 56		
1904 For balance of account for rebuilding and remodelling cars into latest standard Pullman cars...	82,596 60		
For estimated depreciation of cars out of regular service, but used for temporary purposes.....	100,000 00		
For estimated depreciation of extra trucks.....	50,000 00		
		383,701 77	
			$14,521,321 46
Embraced in the following accounts:			
Contingency reserve.....	$613,940 00		
Depreciation account (franchises, patents, etc.).....	1,100,000 00		
Income account.....	12,807,381 46		
		$14,521,321 46	
			$40,782,691 95

Indorsed upon back as follows:—
Directors.—Geo. M. Pullman, Chicago; John Crerar, Chicago; Marshall Field, Chicago; J. W. Doane, Chicago; Norman Williams, Chicago; O. S. A. Sprague, Chicago; Henry C. Hulbert, New York.

(Ex. F, June 15th, 1893, S. B.)

Annual Statement, Pullman's Palace Car Company, Fiscal Year Ending July 31, 1890.

Income account.

Revenue.

From earnings of cars.....	$7,473,135 87	
" patents.....	11,624 00	
" manufacturing, rentals, dividends, interest, &c.	1,376,201 39	
		$8,860,961 26

Disbursements.

Operating expenses, including maintenance of upholstery and bedding, legal expenses, general taxes, and insurance.....	$3,274,604 64	
1905 Proportion of net earnings paid other interests in sleeping car associations controlled and operated by this company.....	1,022,625 65	
Interest on debenture bonds.....	65,600 00	
Dividends on capital stock.....	2,000,000 00	
Contingency reserve.....	100,000 00	
		6,462,830 29
Surplus for the year—being excess of revenue over ordinary disbursements, carried to credit of income account.....		$2,398,130 97

Financial Statement.

Assets.

1,112 cars and equipments, including franchises....	$17,200,113 04	
*Amount invested in other car associations controlled and operated by this company.....	5,259,205 40	

* Total number of cars operated, including association cars, 2,135.

Real estate and plant, 508 acres of land, car works, homes for workmen, and other improvements at Pullman, Ills.		$7,266,365 36	
Real estate and Pullman building, Chicago		993,023 74	
Real estate and plant, Detroit shops		398,287 99	
Real estate and plant, St. Louis shops		131,242 50	
Real estate and plant, Wilmington shops		167,889 08	
Lumber and other construction material and operating supplies, including cars in process of construction, etc.		3,981,807 28	
Patents		99,129 86	
Furniture and fixtures in the several offices of the company		112,577 18	
Stock in Union foundry and Pullman car-wheel works	$437,500 00		
Other stocks and bonds	3,189,522 09		
Receivers' certificates	20,747 21		
Cash	306,168 09		
Demand loans	1,900,000 00		
Time loans	300,000 00		
Balance of accounts receivable and payable	1,249,936 58		
		7,403,873 97	
Total assets			$43,013,515 40

1906 *Liabilities.*

Capital stock issued, 250,000 shares, par value $100 each		$25,000,000 00	
Outstanding bonds:			
8 per cent. currency debenture bonds: Fourth series, due August 15, 1892		820,000 00	
Amount received from sale of old cars, leased from Central Transportation Company		441,370 49	
Total liabilities			$26,261,370 49
Total Liabilities.			
Surplus—invested in the assets of the company		$17,019,452 43	
Less written off during the year:			
For loss on old cars sold or destroyed, replaced by new, &c.	66,857 52		
For depreciation on cars transferred from "cars and equipments" account to account of other car associations controlled and operated by this Co	13,211 70		
For balance of account for rebuilding and remodeling cars into latest standard Pullman cars	87,238 30		
For estimated depreciation of cars out of regular service, but used for temporary purposes	100,000 00		
		267,307 52	
			16,752,144 91
Embraced in the following accounts:			
Contingency reserve		713,940 00	
Depreciation account (franchises, patents, etc.)		1,100,000 00	
Income account		14,938,204 91	
		$16,752,144 91	
			$43,013,515 40

1907 Indorsed upon back as follows:

Directors.—Geo. M. Pullman, Chicago; Marshall Field, Chicago; J. W. Doane, Chicago; Norman Williams, Chicago; O. S. A. Sprague, Chicago; Henry C. Hulbert, New York; Henry R. Reed, Boston.

Counsel for the Central Transportation Company, for the purpose of showing that, in the suit to recover rental under the lease of the Central Transportation Company to the Pullman's Palace Car Company, the latter company raised the objection that the contract was invalid and successfully avoided payment on that ground, offers in evidence record of two suits in the circuit court of the United States for the eastern district of Pennsylvania, both brought by the Central Transportation Company against the Pullman's Palace Car Company, one to October sessions, 1885, No. 14, and the other to October sessions, 1886, No. 6.

Counsel for the Central Transportation Company close their testimony under the cross-bill, and also close their testimony under the original bill, with the exception that they require the production of the books and the answering of the questions refused by the Pullman's Palace Car Company on cross-examination of their witnesses, and which were subsequently ordered by the court on March 2d, 1888, reference to which is made at pages 626, 646, 647, 659, 663, 666, 667 and 811.

Mr. Wintersteen, on behalf of the cross-defendant, objects to the evidence called for as irrelevant to the issues at present trying between the parties, and states that unless instructed by the court to the contrary, after consideration by the court of the case as it at present stands, he will be obliged to advise his clients that the evidence called for need not be produced.

Adjourned.

1908 And afterwards, to wit, on the 5th day of November, A. D. 1894, come the parties aforesaid, by their counsel aforesaid, and this cause being called for argument before Hon. George M. Dallas, circuit judge, and Hon. William Butler, district judge, on pleadings and proofs, and having been argued by counsel for the respective parties, and the court, not being fully advised in the premises, takes further time for the consideration thereof.

And afterwards, to wit, on the 18th day of December, 1894, come the parties aforesaid, by their counsel aforesaid, and the court, being fully advised in the premises, render the following opinion, to wit:

1909 Circuit Court of the United States, Eastern District of Pennsylvania, October Session, 1886.

THE PULLMAN'S PALACE CAR COMPANY
vs.
THE CENTRAL TRANSPORTATION COMPANY. } No. 44.

BUTLER, *J.*:

The Central Transportation Company, a Pennsylvania corporation, chartered December 30, 1862, with a capital of $200,000, authorized to construct sleeping cars and run them under contract with such railroad companies as might contract with it, entered upon the exercise of its franchises, built cars and operated them in pursuance of such contracts. At this time the sleeping-car business was in its infancy; but soon a great demand arose for such cars, and with the improvements made from time to time for the accommodation and comfort of travellers using them it quickly became profitable. The business of this company so increased that in 1865 an enlargement of its capital became necessary, and under authority of the laws of the State it was made $2,000,000. From that time forward its earnings and net profits appear to have been large. By 1870 it had become the owner of one hundred and nineteen cars, with their equipments, at a cost, including repairs,
1910 of over a million and a half of dollars; was the licensee of various patents for such cars, and the owner of others, on account of which it had paid probably half a million of dollars; it had also acquired valuable contracts with many railroad companies, whose roads mainly traversed the country between the Mississippi river and the Atlantic ocean, forming an important and valuable system on which to prosecute its business of operating sleeping-cars.

The Pullman Company was incorporated in 1867, having similar franchises, and was engaged in the same business, with an original capital of $1,250,000, which was increased two years later to $1,750,000. It also had prospered, and in 1870 was the owner of many cars, which it operated under contracts with various railroad companies, mainly in the Western sections of the country.

At this time controversy arose and litigation commenced between the parties, and in view of the situation they mutually agreed that a union and consolidation of the two systems and their business was desirable. In consequence, on February 17, 1870, a lease of the property and business of the Central Transportation Company to the Pullman Company was agreed upon and executed, the
1911 rent being fixed at $264,000 per annum, subject to specified contingencies.

Shortly before entering into the lease the Central Transportation Company purchased the patents under which it had previously paid royalties as licensee for the sum of $266,000, thereby adding this much to the cost value of the property transferred.

Question having arisen respecting the authority of the Central Transportation Company to make the proposed lease, application

was made to the legislature of Pennsylvania at the instance of both parties on this account, and the following statute, dated February 9, 1870, was passed:

"Be it enacted * * * That the charter of the Central Transportation Company * * * be, and the same is hereby, extended for ninety-nine years from the expiration of its present charter; and said company is hereby empowered to enter into contracts with corporations of this State or any other for the leasing or hiring and transfer to them of their railway cars and other personal property, and shall have power to increase their present capital stock $200,000."

Exhibit A, attached to the original bill, is a copy of the
1912 lease, to which we need not at present make further reference.

The Pullman Company took possession of the property and business transferred, consolidating it with its own, thereby creating one harmonious system of sleeping-car transportation that extended throughout the country. Some of the cars received were subsequently sold as unsuited to existing requirements of the lessee's business, and others were abandoned as worn out. Some of the railroad contracts were replaced by new ones taken in the name of the Pullman Company, and some were cancelled. The evidence seems to warrant the defendant's statement that "of the one hundred and nineteen cars transferred five have disappeared without compensation to the Pullman Company, seventy-seven have been sold; that thirty-seven are on hand, and that a total of seven hundred and thirteen thousand three hundred and thirty-four dollars has been received by the Pullman Company" on account of the sales. The car equipments have disappeared. Whether this statement is entirely accurate is not important at this time. Pullman cars and equipments have taken the place of the cars and equipments of the Central Transportation Company, and the property and business of the latter company are completely merged in the property and business of the former, as the parties no doubt contemplated they should be when executing the lease. The
1913 consolidation intended of the interests and prospects of the two companies could not otherwise be accomplished. The effect of uniting the business in the Pullman Company appears to have fully justified the expectation of the parties. The increase of profits over the separate earnings of the two companies was immediate, continued, and very large.

The Pullman Company paid the stipulated rent as it matured until January, 1885, when a dispute arose between the parties (the nature of which is unimportant here), and further payments were refused. The Central Transportation Company sued for the next installment, and recovered a judgment, which was reversed. A second suit being commenced for the following installment, the defendant repudiated the lease by pleas denying its validity as in excess of the lessor's authority and against public policy. The defence was sustained in the court below, and also in the Supreme Court. While the case was pending the Pullman Company filed the original bill, now before us, praying an injunction against fur-

ther prosecution of the suit and against bringing other suits for subsequent installments, setting up as grounds for equitable interference (in substance), first, that the net earnings of the busi-
1914 ness had fallen below $264,000, and that the company therefore desired to surrender the lease in pursuance of its terms; that it was impossible to restore the cars and equipments or reassign the contracts, and that therefore the aid of a court of equity was necessary to ascertain what compensation should be made; and, second, that the lease is invalid because the lessor had no authority to make it, and consequently that the Pullman Company was under no obligation except to return such part of the property as could be returned and render compensation for what could not; that it desired to do this, and needed the court's aid in the premises.

After hearing the parties the court declined to interfere with the suit pending on the ground that the validity of the contract could be there tried as well as in equity, but enjoined against bringing other suits for subsequent installments.

After the decision referred to had been rendered the plaintiff moved for leave to discontinue the bill, and the defendant for leave to file a cross-bill to enforce return of the property or compel compensation. The first of these motions was dismissed, and the second allowed.

Many facts which may be important in a subsequent stage of the case are omitted here as unimportant.

1915 The Pullman Company's answer to the cross-bill, denying responsibility for the property received, raises the principal question before us. The denial rests on the fact that the property was transferred under an unlawful contract.

The following propositions respecting such contracts may be affirmed with confidence: First, that the courts will not enforce them; second, that the courts will not interfere for the relief of either party when they have been executed; third, that the courts will interfere to compel restitution of property received under such a contract by one who repudiates it, except when the contract involves moral turpitude. These propositions find ample support from text writers and the courts. The third only is involved here, and, omitting what is embraced by the exception, it is indisputable. What constitutes "moral turpitude" or what will be held such is not entirely clear. A contract to promote crime certainly involves it. A contract to promote public wrong, short of crime, may or may not involve it. If parties intend such wrong, as where they conspire against the public interests, by agreeing to violate the law or some rule of public policy, the act doubtless involves moral turpitude. When
1916 no wrong is contemplated, but is unintentionally committed, through error of judgment, it is otherwise. "Turpitude" is defined by Webster to be "inherent baseness or vileness of principle, or acting, shameful wickedness." No unintentional wrong or improper act innocent in purpose can involve it. When individuals or corporations enter into contract in excess of authority or violate some rule of law unintentionally, the act does not involve moral wrong, much less turpitude. The subject has been much be-

fore the courts, and, while loose and misleading expressions appear occasionally, the decisions are all reconcilable with this statement. The numerous cases cited by the plaintiff present no exception. Bank *vs.* Owens, 2 Pet., 538, decides only that the courts will not enforce an unlawful contract. Wheeler *vs.* Sage, 1 Wall., 518, is altogether inapplicable. Coppell *vs.* Hall, 7 Wall., 542, was a suit substantially for the fruits of an unlawful contract. St. Louis R. R. Co. *vs.* Terre Haute R. R. Co, 145 U. S., 393, decides that the court will not set aside an unlawful contract which has been so far executed as to make this inequitable. Higgins *vs.* McCrea, 116 U. S., 671, decides that the defendant's counter-claim for money expended in promoting an "offence against the law" cannot be recovered.

In King *vs.* Green, 6 Allen, 139, the contract was fully exe-
1917 cuted, and the court, therefore, refused to interfere *to interfere.*

Atwood *vs.* Fisk, 101 Mass., 363, was a bill to recover property parted with under an unlawful contract, while the plaintiff held the consideration. In Johnson *vs.* Hulings, 103 Pa. St., 498, the plaintiff's cause of action rested on an unlawful consideration—compensation for selling property in violation of the license laws. Myers *vs.* Meinrath, 101 Mass., 366, is identical with King *vs.* Green (6 Allen, 139), being a suit to recover back property parted with under an executed contract. Thomas *vs.* City of Richmond, 12 Wall., 349, was a suit to enforce an illegal contract, and Brown *vs.* Tarkington, 3 Wall., 377, is the same in principle. Dent *vs.* Furguson, 132 U. S., 50, decides that "where one transfers property to defraud creditors and for years acquiesces, concurring in devices, collusive suits, and impositions on courts to further the purpose," equity will not aid him to recover it back. Clements *vs.* Yturria, 81 N. Y., 290; Holt *vs.* Green, 73 Pa. St., 200; Thompson *vs.* Thompson, 7 Vesey, 473; Sykes *vs.* Bradon, 11 Ch. Div., 193; Snell *vs.*

Dwight, 120 Mass., 15, were all suits to enforce illegal con-
1918 tracts.

It is thus seen that not one of these cases is inconsistent with the proposition stated.

On the other hand, Morawetz on Corporations, at sec. 721, says: "The general rule is that if an agreement is legally void and unenforcible by reason of some statutory or common-law prohibition either party to the agreement who has received anything from the other party and has failed to perform the agreement on his part must account to the latter for what has been so received. Under these circumstances the courts will grant relief irrespective of the invalid agreement, unless it involves some positive immorality or there are other reasons of public policy why the courts should refuse to grant any relief in the case." In a foot-note he says: "It is sometimes said to be a maxim in *pari delicto melior est conditio possidentis.* The word *delicto* in this instance, however, means something more than mere illegality. It is difficult to define what constitutes such immorality as will cause the courts not only to declare a contract legally void, but to refuse all relief to the parties, irrespective of the contract. The decisions indicate that the matter

rests largely in the discretion of the courts in each particular case.

1919 "Persons who, at the expense of a corporation, have received benefit from an *ultra vires* transaction, even a transaction that is illegal as against public policy, may have to refund to the corporation to the extent of the benefit they have received."

Taylor on the Law of Private Corporations, section 314, says: "The general rule in regard to contracts which are not immoral or where there are no other reasons of public policy why courts should *feruse* to grant relief, but are simply illegal and unenforcible on account of some statutory or common-law prohibition, is that either party to them who has received anything from the other party and has failed to perform the agreement on his part must account to the other for what has been so received. * * * These principles have been repeatedly applied in actions growing out of contracts entered into by corporations. Though illegal and unenforcible as contracts, recovery of the consideration has generally been allowed where higher public consideration than the immediate equities between the parties were not involved."

Spelling on Private Corporations, section 167, says: "Why should not a corporation be always liable to refund the

1920 money or property of a person which it has obtained improperly and without consideration, or if unable to return it to pay for the benefit obtained thereby. To say that a corporation cannot sue or be sued upon an *ultra vires* arrangement is one thing; to say that it may retain the proceeds thereof which have come into its possession without making any compensation whatever to the person from whom it has obtained them is something very different and savors very much of an inducement to fraud. On the other hand a person who has obtained corporate property or funds in an *ultra vires* transaction has obtained what the parties dealing with him had no power, no authority to alienate. It belongs to the corporation, not to him. Therefore, as in every case of a person obtaining, however *bona fide*, that which belongs to another, such person must make restoration in specie or in value. It seems necessarily to follow that restoration must similarly be made when the alienation was *ultra vires*."

Waterman on Corporations, section 161, page 608, says: "Though a corporation cannot be sued any more than any other citizen directly upon a contract or analogous transaction which does not bind it, yet, if it sets up this defense it must restore to the other party what it has obtained from him. It may repudiate the transaction if it chooses, but if so it must repudiate altogether. It can-

1921 not reprobate and approbate; it cannot keep wh-t in another form it has rejected."

The case of Congress Spring Co. *vs.* Knowlton, 103 U. S., 49, is worthy of particular notice. The suit was for property parted with under an unlawful executory contract. The court, after remarking on the absence of moral turpitude, says: "The question is whether, conceding the contract to be unlawful, the property parted with under it can be recovered back from the other who has not per-

formed." The court holds that it may be and attributes importance to the plaintiff's ignorance of the unlawfulness. Parkersburg *vs.* Brown, 106 U. S., 487, is to the same effect. Here, again, the court points to the fact that the illegal transaction is free from moral turpitude and says: "But, notwithstanding the invalidity of the bonds and of the trust, the O'Briens had a right to reclaim the property and to call on the city to account for it. The enforcement of such right is not in affirmance of the illegal contract, but is in disaffirmance of it and seeks to prevent the city from retaining the benefit which it has derived from the unlawful act." * * * "To deny a remedy to reclaim it is to give effect to the illegal contract. The illegality of the contract does not arise 1922 from any moral turpitude." * * * "In such a case the party receiving may be made to refund to the person from whom he has received property for the unauthorized purpose the value of that which it has actually received. See White *vs.* Franklin Bank, 22 Pick. (Mass.), 181; Morville *vs.* American Tract Society, 123 Mass., 129; Davis *vs.* Old Colony Railroad, 131 *id.*, 258, 275, and cases there cited. The O'Briens having indorsed and sold the bonds, the holders succeeded to such right of the O'Briens as an incident to the ownership of the bonds. The O'Briens suffered the city to take possession of and administer the property. They were made parties to this suit originally and have made no defense to it. The right which the plaintiffs so have to call on the city to render an account of the property is one which can be properly adjudicated in this suit in equity."

In Central Transportation *vs.* Pullman Company, 139 U. S., 24 (where the contract now under consideration was involved), the court said: "A contract *ultra vires* being unlawful and void, not because it is in itself immoral, but because the corporation, by the law of its creation, is incapable of making it, the courts, while refusing to maintain any action upon the unlawful contract, have 1923 always striven to do justice between the parties so far as could be done consistently with adherence to law by permitting property or money parted with on the faith of the unlawful contract to be recovered back or compensation to be made for it.

"In such case the action is not maintained on the unlawful contract nor according to its terms, but on an implied contract of the defendant to return or, failing to do that, to make compensation for property or money which it has no right to retain. To maintain such an action is not to affirm, but to disaffirm, the unlawful contract."

In Logan Co. Bank *vs.* Townsend, 139 U. S., 67, the bank was required to refund property received under an unlawful executory contract, the court saying, "The bank, admitting that it obtained the property in violation of law, is bound to return it. The obligation to do justice, as we said in March *vs.* Fulton, 10 Wall., 676, rests upon all persons, natural and artificial, and if one obtains the property of another without consideration or authority of law, he will be compelled to make restitution. * * * This is a very different thing from enforcing an illegal contract." Telegraph Co. *vs.*

R. R. Co., 1 McCreary, 188; Farmers' Loan Co. *vs.* R. R. Co.,
1924 1 McCreary, 247; Telegraph Co. *vs.* Union Pacific R. R. Co.,
1 McCreary, 558; R. R. Co. *vs.* Simpson, 23 Fed. Rep., 214, and R. R. Co. *vs.* Concord R. R. Co., 20 Atlantic Rep., 383, are to the same effect. It seems to be true that the distinction between *malum prohibitum* and *malum in se* (which never had the support of just reason) has disappeared. This, however, is unimportant. The distinction never had any legitimate bearing on the question.

Thus it follows that unless the execution of the contract between the Central Transportation and the Pullman Palace Car Company involves moral turpitude as before described, the former may recover back the property parted with under it. That it does not involve such turpitude seems clear. Neither party contemplated any wrong. Both believed the contract to be lawful. The statute of 1870 was supposed to confer full authority to make it. The State had unquestionable power to grant the authority, and the evidence shows that the statute was procured for the express purpose of granting it. The question whether the statute did or did not grant it was a close and difficult one. The learned counsel of the parties and the court disagreed on the subject. It was a question of interpretation. In the court's view the lease was *ultra vires* and void; in the counsel's,
it was authorized and lawful. True it violated a rule of
1925 public policy, but this was only because the court construed the statute more narrowly than the legal advisors of the parties had done. The legislature is the judge of what the public interests require in the premises, and if it had authorized the lease, as the parties honestly believed it had, no question of public policy could have arisen. All that can justly be said, therefore, is that the parties misconstrued their authority, and that the lease is consequently *ultra vires*. Whether the lease actually tended to the public disadvantage may be doubted, in view of the evidence. Certainly the Pullman Palace Car Company cannot assert that it did, against its own unqualified declaration to the contrary found in the lease. It would seem difficult to state a case more distinctly and completely within the principle invoked than the one before us. The right to restitution is, indeed, distinctly admitted by the original bill in this case.

The property must therefore be returned or paid for. The former is impossible. The property has substantially disappeared. It has become incorporated with the business and property of the plaintiff and cannot be separated. Compensation must therefore be made. What, then, is the measure of compensation? Clearly, we think
the value of the property when received, together with its
1926 earnings since, less the amount paid as rent. In ascertaining the value the annual rental may be considered, but it does not afford a conclusive nor entirely safe measure of value, because the unlawful consideration (that the Central Company would abstain from exercising its franchises) entered into it. For the same reason the earnings cannot be measured by the rent. The value of the property and earnings must be ascertained from a careful examination of the property, the business, and its earnings

at the time they passed into plaintiff's hands and subsequently. It is not their value to the plaintiff we want, but to the defendant; in effect, what it lost by parting with them. The value of both property and earnings may have been worth more to the plaintiff with the businesses united, but this cannot be considered.

For the purpose of ascertaining these values the court refers the subject to Theodore M. Etting, Esq., as master, with direction to report within sixty days (from the testimony taken and such further as may be produced), unless the time shall be extended by agreement of counsel or on application to the court.

The question of jurisdiction need not be discussed. The character of the relief required and the nature of the inquiry
1927 necessary to afford it puts this beyond controversy. Besides, the point is conceded by the bill originally filed.

The propriety of allowing the defendant to file a cross-bill may rest upon what was said when the allowance was granted.

Dallas, C. J., concurs.

Endorsed: No. 44. Oct. sess., 1886. C. C. U. S., E. D. of Pa. Pullman Palace Car Co. *vs.* Central Transportation Co. Opinion by Butler, J.—Dallas, cir. J., concurring—referring subject, &c., to Theodore M. Etting, Esq., as master, with direction to report within sixty days, &c., &c. Filed Dec. 19, 1894. Samuel Bell, clerk.

1928 In the Circuit Court of the United States for the Eastern District of Pennsylvania. In Equity.

PULLMAN'S PALACE CAR COMPANY *vs.* CENTRAL TRANSPORTATION COMPANY. } October Session, 1866. No. 44.

CENTRAL TRANSPORTATION COMPANY *vs.* PULLMAN'S PALACE CAR COMPANY. } Cross-bill.

To the honorable the judges of said court:

The master to whom was referred the ascertainment of the amount of the compensation to be paid to the Central Transportation Company by Pullman's Palace Car Company, under the order of court heretofore made, respectfully reports:

That he was attended at a meeting held on the twenty-seventh day of December, 1894, and at sundry subsequent meetings by A. H. Wintersteen, Esq., Robert T. Lincoln, Esq., and Edward S. Isham, Esq., counsel for Pullman's Palace Car Company, and Frank P. Prichard, Esq., and John G. Johnson, Esq., counsel for the Central Transportation Company; that additional testimony was taken from time to time on behalf of Pullman's Palace Car Company, and that, after argument by counsel, he proceeded to carefully consider the matter referred.

1929 I. The principal question raised in the main controversy out of which this reference grew was the right of the Central

Transportation Company to recover back property parted with on the faith of the lease made by it to Pullman's Palace Car Company. The decision of the court in substance was, that the right to restitution was clear; that the property must therefore be returned or paid for; that the former was impossible, because it had substantially disappeared in consequence of its incorporation with the business and property of the Pullman Company, and that compensation must therefore be made in accordance with the following rule: "The measure of compensation is the value of the property when received, together with its earnings since, less the amount paid as rent. In ascertaining the value the annual rental may be considered, but it does not afford a conclusive nor entirely safe measure of value, because the unlawful consideration (that the Central Transportation Company should abstain from exercising its franchise) entered into it. For the same reason, the earnings cannot be measured by the rent. The value of the property and earnings must be ascertained from a careful examination of the property, the business and its earnings at the time they passed into the plaintiff's (Pullman's Palace Car Company's) hands, and subsequently. It is not their value to the plaintiff we want, but to the defendant (Central Transportation Company); in effect, what it lost by parting with them. The value of both property and earnings may have been worth more to the plaintiff with the business united, but this cannot be considered."

II. Before taking up the consideration of the main question of fact under this reference, it may be well to state certain other facts which have a bearing of more or less importance upon the question to be answered here, and about which, while there has been some discussion and not an absolute agreement of opinion, there ought, in view of all the evidence in the case, to be in reality no dispute.

1930 1. In the latter part of 1869 certain negotiations were entered into between the Pennsylvania Railroad Company, the Central Transportation Company, and Pullman's Palace Car Company, which, when consummated, led to the execution of two agreements—one between the Pullman Company and the Central Transportation Company, whereby there was assigned, *inter alia*, to the Pullman Company sixteen contracts with various railroad companies, under which the Central Transportation Company had the exclusive right of running sleeping cars over the railroads in question. Amongst the contracts thus assigned were contracts with the Pennsylvania railroad and with certain other railroads leased or controlled by it. The parties to the other agreement were the Pullman Company and the Pennsylvania railroad. By its terms the former company was given the exclusive right of running its cars for fifteen years over the entire Pennsylvania system. The cars in question were to consist in part of the old Central Transportation Company's cars, which had been assigned to the Pullman Company under the agreement first mentioned, and in part of Pullman cars.

These two agreements, which were executed in the early part of

the year 1870, were to relate back to January 1st, 1870, and will be subsequently more fully referred to.

Before so doing, however, it is deemed desirable to consider the condition and business of the Central Transportation Company and of the Pullman Company at the time these negotiations were being conducted, and prior thereto.

2. The Central Transportation Company was incorporated December 30th, 1862, under an act of assembly of the Commonwealth of Pennsylvania, entitled "An act to encourage manufacturing operations in this Commonwealth," approved April 7th, 1849, and the supplements thereto. The amount of capital stock originally authorized was $200,000, which was increased to $2,000,000 by act of June 21st, 1865. The company was granted under these 1931 acts a corporate life of twenty years—that is to say, its life was to continue until December 30th, 1882. An examination of its business prior to the lease, as ascertained from its books, shows the following gross receipts, running expenses, repairs, contingencies, &c.:

Period.	Gross receipts.	Running expenses.	Repairs, contingencies, &c.
July, 1863, to December, 1863	$77,790 00	$34,175 39	$3,116 45
January, 1864, to December, 1864...	176,654 20	32,316 68	11,324 65
January, 1865, to April, 1865	55,701 65	11,744 93	4,118 15

By 1865 its business had so prospered that an increase of its capital was found necessary, and under the provisions of the act of June 21st, 1865, it was increased to $2,000,000, on which capitalization the business was thereafter conducted until February, 1870.

The results attained on the above-named capital were as follows:

Period.	Gross receipts.	Running expenses.	Repairs, contingencies, &c.
April, 1865, to April, 1866..... .	$299,700 49	$63,306 98	$27,194 36
April, 1866, to April, 1867	310,157 16	70,468 11	43,242 76
April, 1867, to April, 1868.....	345,785 49	77,968 18	58,756 38
April, 1868, to April, 1869....	422,172 12	87,087 88	92,959 08
For the nine months between April, 1869, and January 1st, 1870, the business of the company showed the following result.....	371,585 83	86,474 02	100,910 16
	$2,059,546 94	$463,542 17	$341,191 99

The following tables indicate payments to patentees, net receipts, amounts paid in dividends, and undivided profits for the above periods:

Period.	Patents.	Net receipts.
July, 1863, to December, 1863	$6,555 43	$33,942 73
January, 1864, to December, 1864	26,417 96	106,594 91
January, 1865, to April, 1865	7,967 71	31,870 86
April, 1865, to April, 1866	41,839 86	167,359 29
April, 1866, to April, 1867	39,109 27	157,337 02
April, 1867, to April, 1868	44,428 78	164,632 15
April, 1868, to April, 1869	49,278 10	193,277 06
April, 1869, to January, 1870	32,123 81	152,077 84
After January 1st, 1870	266,000 00	
	$513,720 92	$1,007,091 86

1932 The net receipts above referred to were distributed as follows, viz:

Period.	Dividend.	Undivided profits.
July, 1863, to December, 1863	$16,960 50	$16,980 23
January, 1864, to December, 1864	57,894 96	48,699 25
January, 1865, to April, 1865	21,218 50	10,652 36
April, 1865, to April, 1866	120,718 79	46,640 50
April, 1866, to April, 1867	148,067 13	9,269 89
April, 1867, to April, 1868	147,763 00	16,869 15
April, 1868, to April, 1869	163,248 50	30,028 56
April, 1869, to January, 1870	150,297 00	1,780 84
	$826,170 38	$180,921 48

From this examination of the company's business, it appears that its earning capacity on a capital of $2,000,000 for its last entire fiscal year, and its earning capacity for the nine months preceding the lease, can be readily ascertained. From April, 1868, to April, 1869, its net receipts applicable to dividends, and which were either actually distributed or placed to the credit of undivided profits, were $193,277.06, or nine and one-half per cent. on its then capital stock. In addition to the above sum, there was paid by the Central Transportation Company nearly $50,000 to patentees, thereby to that extent reducing its net receipts.

For the nine months immediately prior to the lease, that is to say, from April, 1869, to January, 1870, the net receipts were	$152,077 84
If to this there be added the sum of	38,019 46
Representing the estimated net receipts of the company for the remaining three months of its fiscal year at the same rate, it would follow that the net receipts for the incomplete year in the hands of the Central Transportation Company, as estimated, amount to	$190,097 30

which was equivalent to nine and one-half per cent. on its then capital stock. The business of the company, as indicated by its contracts and earning capacity, indicated a healthy growth.

Its earnings were made by running lines of sleepers between certain termini. Lines, as used in the sleeping-car service, being
1933 the routes designated, the company's control over which was substantially exclusive, and was secured to it, for the most, by sixteen contracts with various railroad companies.

There were also other railroad companies, over whose beds the sleepers of the Central Transportation Company then ran, which, either from their location or business relations with the roads above mentioned were controlled by the contracts above referred to.

For the purposes of this report the railroads are classed as "contract" and "non-contract" roads.

The relations of the company to the various railroads at the time of the lease to the Pullman Company is thus stated by Captain Torrey, general superintendent of the transportation company at the time of its lease, and subsequently division superintendent of Pullman's Palace Car Company:

"The contracts covered the line from New York to Washington, which was made up of four or five corporations in the route. They had their contracts with the Pennsylvania railroad and Northern Central, which gave them the Pennsylvania Railroad lines between Pittsburgh and New York city by the Allentown line, the lines to Philadelphia and the lines to Baltimore, as an eastern end. They had also the Philadelphia and Erie, which was a side line east, connecting with the Northern and Western. Westward they had the Fort Wayne directly, or as an axle line to Chicago, and Pan Handle lines to Columbus, Indianapolis, and Cincinnati, and Louisville and St. Louis as important destinations. That was perhaps the most comprehensive and valuable line, perhaps, I was going to say, in the country—anyway, very valuable. They had the Baltimore and Ohio railroad and its two branches at the west of the Ohio river, the Central Ohio, a line to Columbus and Cincinnati by that route, and the Marietta and Cincinnati route to Cincinnati. Then they had some several small lines in the West, that is, they had the Indianapolis and Cincinnati railroad, they had the Louisville, Cincinnati and Lexington road; they had the Hamil-
1934 ton and Dayton and Dayton and Michigan roads. In the perfection of the Pennsylvania lines it enabled the lines, Jefferson, Madison and Indianapolis and Terre Haute and Indianapolis and the Vandalia line. They were provided with an outlet for the other lines from New York over the Pennsylvania system. They had a contract also with the Bellefontaine railroad from Indianapolis to Crestline, and there connecting to Cleveland and Pittsburgh. Now, that arrangement of local lines in Cincinnati, together with the routes from Cincinnati to Louisville, to St. Louis by way of Indianapolis, and they had also the Ohio and Mississippi, which gave them Cincinnati and Louisville by the Ohio and Mississippi line, and they had, by means of their Indianapolis, Cincinnati and Louisville and the Cincinnati, Hamilton and Dayton, they had the lines

to Toledo, Detroit, and Chicago from Cincinnati. In a general way, the lines were so grouped as to be operated from a common point, and still to cover important lines between large cities."

From the testimony of Mr. F. R. N. Robertson, first assistant auditor of the Pullman Company, it appears that in addition to the lines mentioned by Captain Torrey, the Central Transportation Company was also, at the time of the lease, operating cars over the following railroads: The United Railroads of New Jersey; the Philadelphia, Wilmington and Baltimore and the Little Miami; and, he adds, "There may be others," he says, "which I might include if I was at liberty to look the matter up." The enumeration of roads above mentioned, some of which were contract and some non-contract roads, serves to indicate the extent of territory covered by the lines of the Central Transportation Company at the time of the lease. As both of these witnesses were speaking of a condition of affairs subsisting twenty-five years ago, there is some error in the blending of contract and non-contract roads; but as the contract roads are readily ascertainable, there is no difficulty in separating them from the others. The contract roads were as follows: Pennsylvania railroad; Northern Central railroad; Baltimore and
1935 Ohio railroad; Pittsburgh, Fort Wayne and Chicago railroad; Bellefontaine and Indiana railroad; Indianapolis, Pittsburgh and Cleveland railroad; Ohio and Mississippi railroad; New York and Washington through line; Terre Haute and Indianapolis railroad; St. Louis, Vandalia and Terre Haute railroad; Cincinnati, Hamilton and Dayton; Dayton and Michigan railroad; Marietta and Cincinnati railroad; Central Ohio railroad; Indianapolis and Cincinnati railroad; Columbus, Chicago and Indiana Central railroad; Jefferson, Madison and Indianapolis railroad; Louisville, Cincinnati and Lexington railroad. The roads with which no contracts existed, but over which the cars of the Central Transportation Company were running at the time of the lease, were as follows: Pittsburgh, Cincinnati and St. Louis; Philadelphia and Erie; United Railroads of New Jersey; Philadelphia, Wilmington and Baltimore; and the Little Miami. The Pennsylvania railroad was the backbone of the Central Transportation Company's system, as will readily be seen when it is stated that it owned, leased, or controlled of the above roads at the time of the lease, the Northern Central; the Pittsburgh, Fort Wayne and Chicago; a part of the New York and Washington through line; the Philadelphia and Erie; the Pittsburgh, Cincinnati and St. Louis; the Little Miami; the Columbus, Chicago and Indiana Central; the Terre Haute and Indianapolis; and the St. Louis, Vandalia and Terre Haute.

III. Pullman's Palace Car Company was incorporated in 1867, under the laws of the State of Illinois, with franchises similar to those of the Central Transportation Company. Its capital stock, which was originally $1,250,000, was increased in 1869 to $1,750,000. Its net receipts applicable to dividends for the latter year were $238,561.06, equivalent to about thirteen per cent. on its then capital stock. Its career had been one of marked prosperity. It had the most comfortable cars then known, superior in all respects to

those of the Central Transportation Company, not only in
1936 comfort, but in safety. By 1869 it had the exclusive right to run cars between Chicago and the Pacific coast. It had contracts also with numerous lines to the north and west of Chicago, and was in a position to influence through travel to the East. It had no means, however, of reaching Philadelphia, Baltimore, or Washington from the West, and its only means of reaching New York was by the Grand Trunk and Michigan Central to Buffalo, and thence by the Delaware, Lackawanna and Western to New York. The New York Central was then under contract with the Wagner Sleeping Car Company, and the Erie was under contract with the Barr & Sanderson Company. The latter company was supplanted by the Pullman Company after its acquisition of the Central Transportation Company's property.

IV. The Central Transportation Company at its western termini and at Buffalo, was brought into competition with the Pullman system, and at New York with the systems prevailing upon the New York Central and Erie roads, and the superiority of the equipment furnished by these several companies seriously affected the travel upon the lines of railroad then occupied by the Central Transportation Company. This condition of affairs particularly affected the Pennsylvania railroad and its affiliated lines, and numerous complaints were made to Colonel Scott and Mr. Thomson, who were then in control of the Pennsylvania road, and to Mr. McCullough and others who were then in charge of the Pittsburgh, Fort Wayne and Chicago road, which latter road originally formed the Pennsylvania railroad's connection between Pittsburgh and Chicago, and which was subsequently leased to the Pennsylvania railroad. The Pennsylvania road was at this time seeking to extend its system, not only in the East and West, but in the Southwest as well. The Philadelphia and Erie road, which was operated by it, gave it an important connection with the lake cities. Its lease of the Northern Central gave it, in addition to a connection with Baltimore, an extension practically to Buffalo, whilst the lease of the Colum-
1937 bus and Indiana Central to the Pittsburgh, Cincinnati and St. Louis road gave it a direct communication with Indianapolis, St. Louis, Louisville, and Chicago. In the East it had headquarters in Baltimore, New York, and Philadelphia, and its policy was enterprising and aggressive. In consequence of complaints made from time to time, the officers of the Pennsylvania railroad had become dissatisfied with the cars and service furnished by the Central Transportation Company for its system, and were desirous of securing for its patrons better cars and better service. In addition to these circumstances, the entire condition of sleeping-car transportation at that time was unsatisfactory. A passenger going from Baltimore or contiguous points over the Northern Central to Buffalo, was there obliged to change cars because of the fact that the Central system there met the Pullman and other systems. The same condition of affairs existed at Chicago. Passengers using the Pennsylvania system and bound for the Pacific slope and numerous other points west of Chicago, were obliged to leave the Central

Transportation Company's cars and take Pullman cars, and similar difficulties at Chicago attended the passage of a traveler from the Pacific slope to the Atlantic seaboard using the Pennsylvania system if either New York, Philadelphia, Baltimore, or Washington was his destination. Had it not been that there existed between the Pennsylvania Railroad system and the Central Transportation Company subsisting contracts it would have been possible for the Pennsylvania Railroad Company to make with the Pullman Company contracts by which the difficulties last mentioned would have been overcome, better cars and better service obtained, and a very considerable amount of through travel coming from points west of Chicago be thrown on the lines of the Pennsylvania system. The Central Transportation Company's contracts with the roads included in the Pennsylvania system stood in the way. In this condition of affairs Mr. Scott, it appears from the testimony of Mr. Pullman, sent for him
1938 "and proposed to him a contract with the Pullman Company, provided we made some arrangement with the Central Transportation Company. 'Their cars,' he said, 'were not satisfactory, and their business was not being done satisfactorily.' Negotiations were commenced in August, 1869, and were concluded in January following." As between the two sleeping car companies, the situation was, in some degree at least, complicated by pending litigation, the Central Transportation Company alleging that the Pullman Company had infringed on its patents. Under the conditions then existing, it appeared to be desirable, in the interest of both the sleeping car companies, the railroads, and the public as well, that a consolidation of the Pullman Company and the Central Transportation Company should be effected. Such, at least, was the view of those to whom their management was confided. The matter was considered at various times during the latter part of the year 1869 by committees appointed by both companies, and after an examination of the affairs of the Pullman Company, it was agreed that a lease of the Central Transportation Company to the Pullman Company should be made for ninety-nine years; that the Central Transportation Company should assign to the Pullman Company all of its existing contracts with the railroad companies; transfer to the Pullman Company all of its cars and other property, and that the Central Transportation Company was to receive, subject to certain specified contingencies, as rental, an amount equal to twelve per cent. per annum on its then capital stock of $2,000,000, and on $200,000 additional stock. The $200,000 of additional stock, by which it was proposed to increase the capital of the Central Transportation Company, was to be issued for the purpose of purchasing certain patents under which the Central Transportation Company's cars had been constructed, and of which the Central Transportation Company was at the time licensee, under an agreement with the patentees to pay them a certain proportion of the company's earnings. As between the Pennsylvania Company and the Pull-
1939 man Company, there was concluded a contract whereby the Pullman Company acquired the exclusive right for a term of fifteen years to furnish sleeping cars on all of the passenger trains

of the Pennsylvania railroad, and over the entire line of the Pennsylvania railroad, and on all the roads which they then controlled or might thereafter control by ownership, lease, or otherwise, it being agreed that the cars to be furnished by the Pullman Company should be in part the cars now on the lines of the Pennsylvania railroad, heretofore the property of the Central Transportation Company, which cars were to be put in first-class condition, the Pennsylvania railroad undertaking to continue to repair those cars. In other words, as between the Pennsylvania railroad and the Pullman Company it was agreed, that the various contracts subsisting between different roads constituting a part of its system formerly belonging to the Central Transportation Company, and which had by assignment passed to the Pullman Company, should be exchanged for a single contract, covering the entire system for a definite period, but allowing the equipment of cars to be made up in part of the old Central Transportation Company's cars and in part of new cars to be furnished by the Pullman Company, the railroad undertaking to place the old cars in first-class condition. The terms of the contract as to fuel, light, and maintenance were substantially the same as those contained in the contracts originally made by the Central Transportation Company with the various railroads.

The ability of the companies to effect the proposed solution of the difficulties growing out of the situation was dependent upon the Central Transportation Company's obtaining legislative authority to execute the proposed lease, and at the instance of both sleeping car companies legislative authority was invoked, and an act prepared by Mr. Howard, then of counsel for the Pennsylvania Railroad Company, was presented to the legislature, passed, and approved February 9th, 1870, which, in the judgment of counsel, was
1940 sufficient for the purpose in view. This act was designed to authorize the lease, to extend the corporate life of the Central Transportation Company for ninety-nine years from December 30th, 1882, and to permit the issue of new stock to the amount of $200,000, thereby increasing the capital stock of the Central Transportation Company to $2,200,000.

By the issue of new stock to the extent of $200,000 an annual charge, then amounting to $50,000, was saved, and the dividends proportionately increased, making the net earnings of the company applicable thereto amount to about $240,000, or, say, eleven and one-half per cent. on its new capital of $2,200,000. Shortly after the approval of the act above mentioned the lease of the Central to the Pullman Company above referred to was executed; meanwhile the agreement between the Pennsylvania railroad and the Pullman Company had been executed. The latter contract was executed January 27th, 1870. The master regards these two agreements as being in effect contemporaneous, and as evidencing certain conclusions reached between the three companies in regard to a matter which they had been considering during the latter part of the previous year. The effect of these two contracts was, the Pennsylvania railroad obtained forthwith for its entire system Pullman cars and Pullman connections, agreeing, however, to accept as a part of

its new equipment old cars of the Central Transportation Company, which were to be put in first-class condition. The Central Transportation Company was thus saved from the expenditure necessary to provide a proper equipment of cars and better service, which under other circumstances would have been unavoidable, and received at once a sum exceeding its then earning power by about one half of one per cent., and which payment it was anticipated it would continue to receive. A harmonious system of sleeping-car transportation was thereby established, extending from the Atlantic to the Pacific, the receipts of which it was believed would be sufficiently large to secure the continuous payment of the above rental, and also to insure greater prospective value to the Central
1941 Transportation Company's shares. The Pullman Company acquired an entrance to the principal cities of the Atlantic seaboard by favored routes. It at once took the place of the Central Transportation Company on the Pennsylvania lines, so called, for fifteen years, and also on the lines of all other railroad companies covered by the assigned contracts of the Central Transportation Company, and there was thus established reciprocal relations which have for the most part since continued. It attained an ascendancy in the sleeping-car business which has never since been disputed, as well as a monopoly of a most valuable territory for fifteen years.

V. It appears that immediately after the agreement between the Pennsylvania Railroad Company and the Pullman Company was signed, the question of the acceptance of the old Central Transportation Company's cars arose. Mr. Pullman wanted, Mr. Cassett says, "a lot of these cars put in the scrap pile, and new cars built for the Pennsylvania railroad, at their expense, in place of them. He wanted us to build cars of the pattern he was then using. We wanted those cars, too. We told him that the proper interpretation of the contract was that we should simply maintain the cars as they were, the Central Transportation Company's cars; that it was no part of our business to furnish money for an improved car. There was a great deal of discussion about that, and finally that point was yielded, or rather compromised, by our agreeing to pay the Pullman Company $7,000 for each car as it was taken out of service. We were then to be relieved of our obligation to repair the car. * * * We did not want them, and he did not want them. This payment of $7,000 was really a compromise, first, to relieve us of all obligations to rebuild those cars, and, second, to induce Mr. Pullman to put new cars on in their place of the pattern of the Pullman Palace Car Company. * * * Finally this compromise was made, by which we agreed to pay $7,000 each for all the condemned
1942 cars, to relieve us of our obligation to rebuild them, he agreeing, of course, to go on and replace those cars then at his own expense, using the $7,000 towards that, and to put on Pullman cars." There was in this way received from time to time from the Pennsylvania Company and from the Fort Wayne road large sums of money in settlement for the condemned cars. The sum so received, as well as "amounts received in lieu of repairs," will be subsequently stated.

VI. As a convenient means of considering the Central Transportation Company's contracts with the railroads above mentioned the master has divided them into two groups: (1) those originally made by Woodruff and Knight and assigned to the Central Transportation Company, and (2) those made by the Central Transportation Company directly.

1. The following are the Woodruff and Knight contracts: The Pennsylvania railroad, the Northern Central railroad, the Pittsburgh, Fort Wayne and Chicago railroad, the Bellefontaine and Indiana railroad, the Indianapolis, Pittsburgh and Cleveland railroad, the Baltimore and Ohio railroad. None of these contracts looked to the use of sleepers beyond their own lines, except the Pennsylvania Railroad contract, which contract reads as follows: "To put and run upon their road (Pennsylvania railroad), between Philadelphia and Pittsburgh, or such other points as said Pennsylvania railroad may desire, sleeping cars with patent seats and couches." In all of the contracts, the Pennsylvania railroad included, the railroads were to furnish fuel and light, and were to keep the cars in good or proper order and condition, inside repairs and upholstery excepted. By the terms of the Pennsylvania Railroad contract "the renewal of wheels and axles" was also included. The Northern Central railroad, Bellefontaine and Indiana, and the Indianapolis, Pittsburgh and Cleveland railroad undertook to provide for "renewal of worn-out parts." The
1943 Pennsylvania railroad assumed "the risk of casualties, passengers excepted." The Northern Central, Bellefontaine and Indiana, and Indianapolis, Pittsburgh and Cleveland railroads assumed "the risk of casualties both as to passengers and cars." The Pittsburgh, Fort Wayne and Chicago undertook to repair "all damages done to cars excepting such as may result from defective construction and use of improper material." By the terms of the Baltimore and Ohio contract the railroad was "to furnish lights and fuel and keep the cars in proper running order and condition, including renewal of wheels and axles, inside repairs and upholstery excepted." All of the above contracts relate to sleeping cars constructed under certain patents therein referred to, and the contracts continued during the life of the patents in question. The right granted to the Central Transportation Company to run sleepers for such period was an exclusive right. The statutes of the United States then governing the issue and renewal of patents provided for the issue of patents for the term of fourteen years, with the right to apply for renewal, which could be granted by the Patent Office, and if so renewed the patent would have the same effect in law as though it had been originally granted for a term of twenty-one years. (Act of 1836, section 18.) There was originally before the master some contention as to whether or not renewals had been applied for, and also as to the effect of the act of Congress above referred to. It was, however, after argument, conceded by counsel for the Pullman Company, that Woodruff's patents Nos. 16159, 16160, and 24259, and Knight's patents Nos. 24563 and 27297 were extended shortly after the execution of the lease, and that the right to extend the

same existed under the provisions of the act of Congress above referred to.

It follows, therefore, that the above contracts, which were, in pursuance of the lease made between the two sleeping car companies, assigned to the Pullman Company, expired at various dates in accordance with the duration of the patents referred to therein, and that the said dates of expiration are as follows:

1944 Pennsylvania Railroad contract, December 2d, 1877;
Northern Central, May 31st, 1880;
Baltimore and Ohio, February 28th, 1881;
Pittsburgh, Fort Wayne and Chicago, May 31st, 1880;
Bellefontaine and Indiana, } May 31st, 1880.
Indianapolis, Pittsburgh and Cleveland, }

2. The following contracts were executed by the Central Transportation Company after its incorporation, and were, in pursuance of the lease made between the two sleeping car companies, assigned to the Pullman Company:—

New York and Washington through line,
Ohio and Mississippi railroad,
Terre Haute and Indianapolis railroad,
St. Louis, Vandalia and Terre Haute railroad,
Cincinnati, Hamilton and Dayton,
Dayton and Michigan,
Marietta and Cincinnati,
Central Ohio,
Indianapolis and Cincinnati,
Columbus, Chicago and Indiana Central,
Jefferson, Madison and Indianapolis,
Louisville, Cincinnati and Lexington.

These contracts were, with a few exceptions, to continue "during the continuance of the incorporation of the party of the first part" (the Central Transportation Company). The life of the corporation, at the time the contracts in question were made, continued until December 30th, 1882. The exceptions above noted were the contracts with the Ohio and Mississippi railroad, the duration of which depended upon the terms of the patents referred to therein; the New York and Washington through line, the Terre Haute and Indianapolis Railroad Company, and the St. Louis, Vandalia and Terre Haute, all of which expired at definite periods; and the Cincinnati, Hamilton and Dayton and Dayton and Michigan railroads, which were to continue "during the incorporation of the Central Transportation Company, not exceeding twenty years."

1945 The Ohio and Mississippi contract expired December 14th, 1878; the New York and Washington through line, April 12th, 1874; the Terre Haute and Indianapolis, September 1st, 1878; the St. Louis, Vandalia and Terre Haute, September 1st, 1878; the Cincinnati, Hamilton and Dayton. All of the other contracts above referred to would have expired on December 30th, 1882, had not the corporate life of the Central Transportation Company been extended by act of 9th of February, 1870, above referred to. In all of the contracts made by the Central Transportation Company the

railroad companies were to provide light and fuel, keep the cars in good running order and repair, including renewal of worn-out parts, upholstery and bedding, so far as usual wear and tear are concerned excepted. The railroad company was to take all risk of casualties, both as to passengers and cars. In the case of the Columbus, Chicago and Indiana Central railroad there was excepted "the rights conferred upon Frederick M. Colburn by contract of the Columbus and Indianapolis Central railroad, dated October 10th, 1866," and in the case of the Terre Haute and Indianapolis there was excepted "the rights heretofore granted by written contract with the Indianapolis and St. Louis Sleeping Coach Company." The St. Louis, Vandalia and Terre Haute contract excepted "that part of the road between Effingham and St. Louis." The exception referred only to the rights reserved to grant like privileges to other parties. Subject to the above exceptions, which were practically unimportant, the right of the Central Transportation Company to run sleeping cars on all of the roads with which it made contracts directly was an exclusive right. None of the contracts made by the Central Transportation Company directly, or assigned to it by Woodruff or Knight, made any provision for renewal. All the contracts excepted "upholstery and inside repairs, which were to be kept up by the Central Transportation Company." Twelve of the contracts provided "that the railroad company should keep the cars in good running order and repair, including renewal of worn-out parts." Two contracts provided that "the railroad company should keep the cars in proper running order and condition, including
1946 renewal wheels and axles." One contract provided that the "railroad company should make all repairs and renewals." One contract provided the railroad company "should keep the cars in proper running order and condition, and repair all damages." They were all assigned by the Central Transportation Company to the Pullman Company, in pursuance of a lease executed February 17th, 1870, together with the cars and equipment of the Central Transportation Company, and the patents under which the cars had been built and equipped.

After the execution of the lease, some of the Central Transportation Company's contracts were replaced by new ones, taken in the name of the Pullman Company, and some were canceled. The railroad development which followed has been attended with numerous reorganizations, and the various railroads with which the Central Transportation Company had subsisting contracts became merged into what is now known as the Pennsylvania system, the Baltimore and Ohio system, the Cleveland, Cincinnati, Chicago and St. Louis (popularly known as the Big Four), the Louisville and Nashville, and the Cincinnati, Hamilton and Dayton and Dayton and Michigan, which is an independent road.

VII. At the time that the negotiations between the two sleeping car companies was in progress, the rolling stock of the Central Transportation Company consisted of one hundred and nineteen cars. Some of the cars were the original cars built for Woodruff and Knight, but which had been reconstructed from time to time.

Others were of later original construction, and were provided with more modern equipments, whilst others again, known in the testimony as "silver palace cars," were of quite recent introduction. Its outfit of cars represented the growth and development of the sleeping car in the hands of the Central Transportation Company. It consisted entirely of four truck cars, smaller in size than the Pullman car of the same period, much lighter in construction, and provided
1947 with inferior berthing arrangements. Their internal arrangement generally was this: An aisle ran through the middle of the car, on each side of which was what is known as a state-room, with two or three berths, one above the other. The lower berth was wide, but the passenger occupying it suffered at times severely from the lack of ventilation. The upper berth originally was narrow, and consisted of two parts. It was uncomfortable, unwieldy, and burdensome. The cars were not built on correct engineering principles, and at times, in going around curves, would settle, changing their shape, and making it difficult to get the doors open. Though built for the most part on the same general plan and of the same general arrangement, their equipment was not uniform in character. Some of them were two and some three berths cars. The cars known in this testimony as "silver palace cars" were handsomer, heavier, better constructed, and safer in case of a turn-over, and were provided with a wash-room and vestibule, and the state-room contained but two berths.

2. The cars actually transferred to the Pullman Company were one hundred and fifteen in number; four, of the cars intended to be transferred, having been destroyed by casualties before their physical transfer was effected.

The Pullman Company, however, subsequently received from the railroad companies value for the cars in question.

The average life of the cars was from seven to nine years. The original cars were in many cases, after their transfer, rebuilt from the trucks up. Two of them, which are still running, have been twice thus rebuilt. They are now being used as hunting cars, so that their use has not been continuous.

From the records of the Pullman Company, supplemented by parol testimony, the history of each of the original cars can be traced, and the age and condition of each car at the date of its transfer to the Pullman Company, and its subsequent service, can be measurably determined, and is as follows:

Car No. 1.—Originally delivered March 3d, 1859; rebuilt
1948 at the Altoona shops, and came out September, 1868, as a silver palace car; ran on Chicago through lines until August 21st, 1870, when it was shopped, and put into the New York and St. Louis line, and subsequently on the local lines of the Pennsylvania railroad, where it remained until July, 1873, when it was chartered to Haighth & Co.'s circus until October, 1873; laid at Philadelphia until April 20th, 1874, when it was condemned by the Pennsylvania railroad, and settled for June 27th, 1874, at $7,000.

Car No. 2.—Delivered in 1866; was remodeled March 4th, 1869, into a silver palace car; was running on the New York and Cin-

cinnati line, and between Altoona and Jersey City, until 1871, when it was transferred to the Chicago division; received back in 1872, and ran on the Pennsylvania Railroad lines until November 13th, 1872, when it was condemned by the Pennsylvania railroad, and settled for March 7th, 1873, at $7,000.

Car No. 3.—Delivered in 1864; in use on the Philadelphia and Erie railroad in 1869; was run on the local lines of the Pennsylvania and Philadelphia and Erie until 1870, when it was condemned, and $7,000 paid March 7th, 1873, in settlement for it by the Pennsylvania railroad. A new car was built to replace it, No. 186, the "Renova."

Car No. 4.—Built at Altoona by the Pennsylvania railroad, and delivered in 1866; converted into a silver palace car in February, 1869, at the Pennsylvania Railroad shops; was shopped in 1870, and was burned at Lockport, February 23d, 1871, and was settled for by the Pennsylvania railroad, $9,000 being paid March 20th, 1873, in settlement for the car, and $1,067.66 for its equipment.

Car No. 5.—Delivered in 1858; remodeled at the Pennsylvania Railroad shops, and came out as a silver palace car April, 1866, and ran on Chicago and New York lines until March, 1871, when
1949 it was condemned, and $6,000 paid in settlement May 5th, 1873, by the Pittsburgh, Fort Wayne and Chicago railroad, and was replaced by car No. 261 in September, 1872.

Car No. 6.—Delivered in 1858; condemned in October, 1870, by the Pittsburgh, Fort Wayne and Chicago road, and settled for at $6,000 May 5th, 1873. It was replaced by car No. 262 in September, 1872, and was transferred to the Chicago division December 31st, 1886.

Car No. 7.—Delivered in 1866 at Altoona; condemned December 2d, 1870, and $7,000 paid March 7th, 1873, by the Pennsylvania railroad in settlement.

Car No. 8.—Delivered in 1859; remodeled in 1869, and ran between Pittsburgh and Cincinnati until February 1st, 1873, when it was condemned by the Pittsburgh, Cincinnati and St. Louis railroad, and $7,000 paid November 11th, 1875, in settlement. Replaced by car No. 269.

Car No. 9.—Delivered in April, 1864; was idle at the time of its transfer to the Pullman Company; was overhauled and came out in November, 1868; was condemned November, 1872, and $7,000 paid November 11th, 1875, in settlement by the Pittsburgh, Cincinnati and St. Louis railroad, and transferred to the Chicago division December 31st, 1886.

Car No. 10.—Delivered in September, 1865; condemned October 25th, 1870, and settled for March 7th, 1873, by the Pennsylvania railroad at $7,000.

Car No. 11.—Delivered January 27th, 1862; converted at the Allegheny shops into a silver palace car June 5th, 1869; ran on the Pittsburgh, Fort Wayne and Chicago road until June 16th, 1871, when it was transferred to the Chicago division; received back October 1st, 1872; condemned January 20th, 1873, and $7,000 was

paid May 5th, 1873, by the Pittsburgh, Fort Wayne and Chicago road in settlement.

1950 Car No. 12.—Delivered in 1862; converted into a silver palace car in 1869; ran on the Pittsburgh, Fort Wayne and Chicago road until June 16th, 1871, when it was transferred to the Chicago division; received back in 1872; condemned January 20th, 1872, and $7,000 paid May 5th, 1873, in settlement by the Pittsburgh, Fort Wayne and Chicago road.

Car. No. 13.—Delivered in 1862; was remodeled in 1868, and was variously used until April 30th, 1881, and is now stored at Pullman.

Car No. 14.—Was delivered in 1862; remodeled in 1868, and ran on the Bellefontaine railroad until July, 1870, when it was transferred from the Central division, and is now stored at Mt. Desert ferry. Last service, February 13th, 1887.

Car No 15.—Was delivered in 1862; remodeled and delivered June, 1870, as a silver palace car; used on the Northern Central lines until December 5th, 1872, when it was wrecked; condemned in July, 1873, and settlement was made by the Pennsylvania railroad, $7,000 being paid October 16th, 1874, for the car, and $182.69 for its equipment. Replaced by car 315.

Car No. 16.—Was delivered December 20th, 1862; was converted April 28th, 1870, into a silver palace car; was run on the Northern Central Railroad lines until November, 1873, when it was condemned. Settled for August 17th, 1874, by the Pennsylvania Railroad Company, $7,000 being paid in settlement.

Car No. 17.—Delivered March 7th, 1863; was broken up in the Pennsylvania yards at Altoona, September 17th, 1869. This car was never transferred to the Central Transportation Company, but March 7th, 1873, $7,000 was received by the Pullman Company from the Pennsylvania Railroad Company in settlement.

1951 Car No. 18.—Delivered March 17th, 1863; ran in the Pennsylvania lines. Its berthing arrangements were changed in April, 1867; was cut up in the Altoona yards October 18th, 1870, and $7,000 was received from the Pennsylvania Railroad Company in settlement March 7th, 1873.

Car No. 19.—Ran on the Pennsylvania lines; the original car was broken up in the Philadelphia yard; May 11th, 1869, the present car was built at Altoona, after plans prepared under the supervision of A. J. Cassatt; came out of the shop so converted June 16th, 1870, and was burned February 28th, 1871. Seven thousand dollars was paid by the Pennsylvania Railroad Company March 3d, 1873, in settlement.

Car No. 20.—Delivered August, 1863; ran in the Pennsylvania lines; converted into a silver palace car at the Pittsburgh shops of the Pennsylvania Railroad Company; last service May 8th, 1872.

Car No. 21.—Delivered in 1863; remodeled in 1867; ran in the Pennsylvania lines; was cut up in Altoona yard in 1870. Seven thousand dollars was received from the Pennsylvania Railroad

Company in settlement March 7th, 1873. The original cost of this car was $4,299.60.

Car No. 22.—A vestibuled sleeping car, built by the Pennsylvania Railroad Company July, 1868; remodeled March 6th, 1871, with berths, &c., in the Pullman pattern. Commenced running on the local lines of the Pennsylvania railroad, where it remained until July, 1873, when it ran on the Allegheny Valley railroad until July 1st, 1873, when it was wrecked on the Allegheny Valley railroad. It lay at the Allegheny yards until January 11th, 1874; came out of shop June 3d, 1874, since which time it has been running on the Pennsylvania lines; condemned and stored at Altoona, May 8th, 1879, where it now is. There was received from the Pennsylvania Railroad Company $4,000 in lieu of repairs. The original cost of this car was $9,000.

1952 Car No. 23.—Built by the Pittsburgh, Fort Wayne and Chicago Railroad Company; delivered on September 6th, 1870; a silver palace car, and ran in the New York and Chicago through lines; reshopped from time to time and used until October, 1882, when it was stored at Altoona; used in a trip to San Francisco, August, 1883, and was returned to Altoona and stored, where it now is; was transferred from maintenance to mileage basis May, 1882. June 13th, 1883, there was received from the Pittsburgh, Fort Wayne and Chicago Railroad Company, in lieu of repairs, $5,406.56. The original cost of this car was $4,504.29.

Car No. 24.—Delivered in 1864; ran in the Pittsburgh, Fort Wayne and Chicago Railroad lines until 1870; was cut up in May, 1871, and settled for by the Pittsburgh, Fort Wayne and Chicago Railroad Company April 24th, 1874. The original cost of this car was $4,504.30.

Car No. 25.—Delivered in August, 1864; ran in the Pennsylvania Railroad lines; converted April 1st, 1869, into a silver palace car; was burned near Mansfield, February 28th, 1871, and was settled for by the Pennsylvania Railroad Company March 7th, 1873, $8,500 being received by the Pullman Company in settlement for the car, and $768.80 for equipment. The original cost of this car was $4,676.79.

Car No. 26.—Delivered in 1864, and ran on the Pennsylvania lines until 1867, when it was transferred to the Baltimore and Ohio railroad; it was deemed worthless by the Pullman Company. Settlement was made with the Baltimore and Ohio Railroad Company April 12th, 1873, the railroad company paying $1,000 for the car and $3,000 as the amount due in lieu of repairs. The original cost of this car was $4,676.79.

Car No. 27.—Was rebuilt in April, 1868; of the silver 1953 palace type, and was run between Pittsburgh and Cincinnati until January 22d, 1873, when it was condemned and dismantled and turned over to the Pittsburgh, Cincinnati and St. Louis railroad; replaced by car No. 268. Seven thousand dollars was received from the Pittsburgh, Cincinnati and St. Louis Railroad Company in settlement. The original cost of this car was $3,402.25.

Car No. 28.—Delivered in 1863; ran on the Baltimore and Ohio

railroad; remodeled in 1868, and returned to the Baltimore and Ohio Railroad Company as a worthless car. The Baltimore and Ohio Railroad Company paid, April 12th, 1873, $1,000 in settlement of the car and $3,000 in lieu of repairs.

Car No. 29.—Delivered September 25th, 1865; remodeled at West Philadelphia, and sent to the Bellefontaine railroad in November, 1867, to which road it has since been assigned; was loaned to the Louisville, Cincinnati and Lexington railroad, September, 1869, and returned February, 1870. Idle until January, 1871, when it was condemned and taken to Wilmington. The original cost of this car was $7,115.42.

Car No. 30.—Built at Altoona by the Pennsylvania Railroad Company; delivered May, 1868; had previously been a director's car. It ran on the through lines, Cincinnati to Chicago, until August, 1870, when it was remodeled into an open Pullman car; came out December 31st, 1870, and assigned to Philadelphia and Pittsburgh lines, where it remained until December, 1873, when it was loaned to the Louisville, Cincinnati and Lexington Railroad Company, and run between Cincinnati and Louisville, where it remained until December 10th, 1874, when it was returned, and since run on the Pennsylvania local lines; interior partly burned at West Philadelphia, December 15th, 1876. There was received from the Pennsylvania Railroad Company, October 16th, 1879, $4,000 in lieu of repairs. It is now stored at Altoona. The original cost of this car was $7,115.42.

1954 Car No. 31.—Built for E. C. Knight; running on the Baltimore and Ohio railroad since 1866; was remodeled and returned January 21st, 1869; April 12th, 1873, was sold to the Baltimore and Ohio Railroad Company, $1,000 being received for the car and $3,000 in lieu of repairs.

Car No. 32.—Delivered 1868; ran on the Northern Central road; was remodeled July 27th, 1870, into a silver palace car, and subsequently remodeled into an open Pullman car, coming out of the shops January 9th, 1871; was used on the Philadelphia and Erie road, and was totally destroyed by fire January 29th, 1872. There was received from the Philadelphia and Erie road, July 31st, 1873, $8,000 for the car and $1,674.19 for its equipment. The original cost of this car was $5,500.

Car No. 33.—Built for E. C. Knight; sold to Philadelphia, Wilmington and Baltimore Railroad Company; purchased by the Central Transportation Company May 14th, 1864; went on the Baltimore and Ohio road in 1865, where it has since remained; old and worthless; condemned January, 1871; settlement was made April 12th, 1873, $1,000 being received for the car and $3,000 in lieu of repairs. The original cost of this car was $5,500.

Car No. 34.—Delivered October 20th, 1864; ran on the Pennsylvania railroad; remodeled at West Philadelphia shops; came out March 18th, 1870, a silver palace car; run in the through and local lines until December, 1871, when it was condemned and settled for. Seven thousand dollars was received in settlement from the Penn-

sylvania Railroad Company, March 7th, 1893. The original cost of this car was $7,005.

Car No. 35.—Delivered 1864; ran on the New York and Washington lines; was overhauled in 1866; a very poor car; was reupholstered and repaired March, 1870; it lay as an extra at Washington December, 1870; condemned April, 1871; taken to Altoona, August 31st, 1879, and stored. The original cost of this car was $7,005.

1955 Car No. 36.—Sold to the Central Transportation Company; an old car; was rebuilt in 1868, and made a silver palace car; was always run on the Ohio and Mississippi lines; condemned and settled for September 30th, 1882, $4,000 was received in settlement from the Ohio and Mississippi Railroad Company. The original cost of this car was $7,253.92.

Car No. 37.—Purchased in 1864; remodeled into a silver palace car, coming out May 16th, 1870; was used on the Ohio and Mississippi road; was wrecked near Hadleigh Station, February 16th, 1875. Settled for by the Ohio and Mississippi Railroad Company, July 31st, 1882, the railroad company paying $9,991.25 for the car and $470.65 for its equipment. The original cost of this car was $7,253.92.

Car No. 38.—Built by the Pennsylvania Railroad Company June, 1868; a silver palace car; ran on through lines to Chicago until March 10th, 1870, when it was run on the Allegheny Valley railroad; returned October, 1870; shopped at West Philadelphia December 30th, 1870; remodeled into an open Pullman car; came out June 1st, and commenced running on the New York and Louisville line; was shopped again in 1872. It ran on the Philadelphia and Pittsburgh line for a part of 1874, since which time it has been run as an extra between Philadelphia and Pittsburgh; sent to Altoona, where it now is, having been condemned; last service April 3d, 1877. There was received from the Pennsylvania Railroad Company, October 16th, 1879, $4,000 in lieu of repairs. The original cost of this car was $7,253.92.

Car No. 39.—Purchased October 1st, 1864; from 1866 to 1872, it was run between Cincinnati, Toledo, and Detroit; lay in Cincinnati, Hamilton and Dayton yard until March, 1874, when it was transferred to the construction department for remodeling; re-

1956 ceived from the construction department June 9th, 1874, remodeled into a fixed-berth car; from June 20th, 1874, it ran on the Baltimore and Potomac railroad; its last service was November 10th, 1878. There was received for it, May 2d, 1873, in lieu of repairs, $4,250, which amount, apparently, was received from the Ohio and Mississippi Railroad Company. The original cost of this car was $6,000.

Car No. 40.—Was built June, 1866, by the Cincinnati, Hamilton and Dayton Railroad Company, running between Cincinnati and Toledo or Detroit until March 13th, 1874, when it was transferred to the construction department for remodeling; remodeled into a fixed-berth car, from June 22d, 1874, running on the Baltimore and Potomac road; last service November 10th, 1878. There was re-

ceived in lieu of repairs May 2d, 1873, $4,250, apparently from the Cincinnati, Hamilton and Dayton road. The original cost of this car was $6,000.

Car No. 41.—Delivered November 23d, 1864; ran on the Pennsylvania Railroad lines; broken up in the yard at Altoona, December 21st, 1869; was never transferred to the Pullman Company, but $7,000 was received March 7th, 1873, by the Pullman Company from the Pennsylvania railroad in settlement. The original cost of this car was $7,000.

Car No. 42.—Was delivered in 1864; assigned to the New York and Washington lines; side-tracked December, 1870; was worn out at Philadelphia; condemned and taken to Altoona August 31st, 1879, where it now is. The original cost of this car was $7,000.

Car No. 43.—Delivered December 26th, 1865; assigned to the Indianapolis and Cincinnati railroad in 1868; sold to the Indianapolis, Cincinnati and St. Louis Railroad Company, May 15th, 1873, for $2,500. The original cost of this car was $7,084.52.

1957 Car No. 44.—Delivered December 25th, 1864; remodeled July, 1868; used on the Indianapolis, Cincinnati and St. Louis railroad, to which road it was sold, May 15th, 1873, for $2,500. The original cost of this car was $7,000.

Car No. 45.—Delivered February 9th, 1865; assigned to the Central Ohio; a very poor car; burned inside January 6th, 1871; condemned and dropped April, 1871. There was received from the Baltimore and Ohio Railroad Company, April 12th, 1893, in settlement of car, $787.15, in settlement of equipment, and $3,000 in lieu of repairs. The original cost of this car was $7,775.

Car No. 46.—Delivered February 9th, 1865; assigned to the Central Ohio; a very poor car; condemned September 15th, 1871. There was received from the Baltimore and Ohio Railroad Company, April 12th, 1873, $1,000 in settlement of car and $3,000 in lieu of repairs. The original cost of this car was $7,859.52.

Car No. 47.—Delivered February 27th, 1865; ran on the Pennsylvania lines between Philadelphia and Renovo; condemned March, 1871; last service April 27th, 1872. There was received March 7th, 1873, from the Pennsylvania Railroad Company, $7,000 in settlement. The original cost of this car was $6,700.

Car No. 48.—Delivered February 27th, 1865; remodeled in 1868; ran between Philadelphia and Renovo on Pennsylvania lines until March, 1871, when it was condemned. There was received from the Pennsylvania Railroad Company, March 7th, 1873, $7,000 in settlement. The original cost of this car was $6,700.

Car No. 49.—Delivered March 29th, 1865; ran on the Pennsylvania railroad and branch lines until February 23d, 1871, when it was wrecked on the Philadelphia and Erie road; condemned

1958 April, 1871. Settled for by the Pennsylvania Railroad Company, June 25th, 1874, $7,000 being paid in settlement. The original cost of this car was $6,700.

Car No. 50.—Delivered March 29th, 1865; ran on the Pennsylvania railroad—Philadelphia and Erie road—until April, 1871, when it was condemned and settled for by the Pennsylvania Railroad

Company, March 7th, 1875, $7,000 being paid in settlement. The original cost of this car was $6,700.

Car No. 51.—Delivered April 4th, 1865; ran on the Pittsburgh, Fort Wayne and Chicago road; was condemned April, 1871, and was replaced by car No. 264. Settlement was made April 24th, 1874, with the Pittsburgh, Fort Wayne and Chicago road, by which $6,000 was paid for the car. The original cost of this car was $9,200.

Car No. 52.—Delivered April, 1865; ran on to the Pittsburgh, Fort Wayne and Chicago road; burned 1868, and new car came out December, 1868, which continued running on the Pittsburgh, Fort Wayne and Chicago road until July 10th, 1873, when it was condemned and settled for by the Pittsburgh, Fort Wayne and Chicago Railroad Company, April 24th, 1874, $7,000 being paid for car and $134.46 for its equipment. The original cost of this car was $9,200.

Car No. 53.—Was an old car, bought by the Central Transportation Company, July 5th, 1865; a very poor car; condemned in March, 1870, at Cincinnati; destroyed November, 1874. Settlement was made with the Ohio and Mississippi Railroad Company, July 31st, 1882, $9,991.26 being received in settlement. The original cost of this car was $5,000.

Car No. 54.—Delivered in 1859; was bought January 5th, 1865, and remodeled into a silver palace car January 6th, 1872; 1959 always ran on the Ohio and Mississippi lines. Was condemned and settled for May 8th, 1882, $4,000 being received from the Ohio and Mississippi Railroad Company in settlement. The original cost of this car was $5,000.

Car No. 55.—Delivered May 12th, 1865; assigned originally to the Bellefontaine road; last service July 12th, 1873. Was settled for by the Alabama Central Railroad Company July 31st, 1874, $6,101.57 being received in settlement. The Central Transportation Company apparently retained and used this car, as its last service is given February, 1876. The original cost of this car was $6,700.

Car No. 56.—Delivered in 1865 and assigned to the Bellefontaine road; ran on the Pennsylvania railroad; cut up in the Altoona yard, December 6th, 1870. Seven thousand dollars was received from the Pennsylvania Railroad Company in settlement, March 7th, 1873. The original cost of this car was $6,700.

Car No. 57.—Delivered July 22d, 1865, and assigned to the Bellefontaine road, and ran until June, 1870, presumably on that road. This car, however, appears to have been used subsequently at times, where not stated, as its last service is given as February 15th, 1887. It is now stored at Altoona. The original cost of this car was $6,536.19.

Car No. 58.—Delivered July 22d, 1865, and ran on the Pennsylvania railroad; cut up in Altoona yard, November 20th, 1870. There was received in settlement from the Pennsylvania Railroad Company, March 7th, 1877, $7,000. The original cost of this car was $6,536.18.

Car No. 59.—Delivered June 4th, 1865; ran on New York and

Washington lines until September, 1868, when it ran on the Philadelphia and Erie and Pennsylvania railroad; burned in Erie yard 1870; replaced by car No. 189. Settled for by the Pennsylvania Railroad Company, March 7th, 1873, $7.000 being received in settlement. The original cost of this car was $6,500.

1960 Car No. 60.—Delivered June 4th, 1865; ran on New York and Washington lines until March 19th, 1869, when it was transferred to the Philadelphia and Erie road and Pennsylvania road; burned in March, 1871, and there was received from the Pennsylvania Railroad Company, March 7th, 1873, $7,000 in settlement of car. The original cost of this car was $6,500.

Car No. 61.—Delivered October 28th, 1865; assigned to Baltimore and Ohio railroad; was remodeled February 16th, 1869; condemned, March, 1871. There was received in settlement from the Baltimore and Ohio Railroad Company, April 12th, 1873, $1,000 for car and $3,000 in lieu of repairs. The original cost of this car was $7,400.89.

Car No. 62.—Delivered October 28th, 1865; assigned to Baltimore and Ohio railroad; remodeled in 1868; condemned August 23d, 1871. There was received in settlement from the Baltimore and Ohio Railroad Company, April 12th, 1873, $1,000 for car and $3,000 in lieu of repairs. The original cost of this car was $7,400.88.

Car No. 63.—Delivered November 23d, 1865; originally assigned to the Marietta and Cincinnati railroad; single, up-berth arrangement; ceased to run May, 1870; condemned and dropped April, 1871. There was received from the Baltimore and Ohio Railroad Company, April 12th, 1873, $3,000 in lieu of repairs. The original cost of this car was $6,565.57.

Car No. 64.—Delivered November 23d, 1865; remodeled and came out a ten-section silver palace car February 28th, 1870; ran on the Marietta and Cincinnati railroad until November 1st, 1872, when it was dropped, from which time it lay idle; car considered unsafe and unfit for service; last service October 14th, 1872. There was received from the Baltimore and Ohio Railroad Company, April 12th, 1873, $3,000 in lieu of repairs. The original cost of this car was $6,565.57.

1961 Car No. 65.—Delivered July 25th, 1865; rebuilt June 16th, 1870; used on the Pennsylvania Railroad lines until October 3d, 1878, when condemned and stored at Altoona. There was received from the Pennsylvania Railroad Company, October 16th, 1879, $4,000 in lieu of repairs. The original cost of this car was $10,836.05.

Car No. 66.—Delivered January 24th, 1866, and assigned to Pittsburgh, Cincinnati and St. Louis Railroad Company; was condemned in January, 1871. This car was not transferred to the Pullman Company. There was received, April 12th, 1872, by the Pullman Company from the Pittsburgh, Cincinnati and St. Louis Railroad Company $6,000 in settlement of car. The original cost of this car was $10,836.05.

Car No. 67.—Delivered October 1st, 1869; a silver palace car; employed on the New York and Cincinnati lines until December

19th, 1878. There was received November 11th, 1875, from the Pittsburgh, Cincinnati and St. Louis Railroad Company, in settlement for car, $5,000. The original cost of this car was $7,331.92.

Car No. 68.—Delivered February 14th, 1866; assigned to the Pittsburgh, Fort Wayne and Chicago road, running up to March 23d, 1870, when it was cut up in Allegheny yard. There was received from the Pittsburgh, Cincinnati and St. Louis Railroad Company, November 11th, 1875, $6,000. The original cost of this car was $7,331.91.

Car No. 69.—Delivered August 1st, 1867; a silver palace car; ran on the Pittsburgh, Fort Wayne and Chicago road until July 10th, 1871, when it was condemned. There was received from the Pittsburgh, Cincinnati and St. Louis Railroad Company, November 11th, 1875, $7,000 in settlement of car and $134.45 in settlement of equipment. The original cost of this car was $13,748.99.

1962 Car No. 70.—A silver palace car; delivered June 1st, 1867; ran in the through lines until November 24th, 1869, when it was shopped and transferred to the Vandalia road; was transferred back to the Pennsylvania lines in 1871, and ran on the Pennsylvania lines until April, 1873, when it was cut up. There was received from the Pennsylvania Railroad Company, July 11th, 1874, $7,000 in settlement of car. The original cost of this car was $9,400.46.

Car No. 71.—A silver palace car, named "Susquehanna;" ran in the Chicago lines until March 10th, 1870, when it ran on the Allegheny Valley railroad; was remodeled into an open Pullman car; was employed on the various railroads by the Great Southern circus during 1873, 1874, 1875, and 1876; in October, 1877, was condemned and sent to Altoona to be stored, where it now is. There was received in lieu of repairs from the Pennsylvania Railroad Company, October 16th, 1879, $4,000. The original cost of this car was $15,500.

Car No. 72.—Delivered March 1st, 1867; a silver palace car; running in the New York, Cincinnati and Chicago lines; employed on the Pennsylvania lines, generally, until May 12th, 1872, when it was chartered to Barnum's show from May to November, 1872; lay as an extra in the West Philadelphia yards from November, 1872, to April, 1873, when it was chartered by the Transatlantic museum; was returned to Pittsburgh August 2d, 1873; lay idle in West Philadelphia yards from August, 1873, to April, 1874, when it was condemned and dropped. There was received from the Pennsylvania Railroad Company, June 25th, 1874, $7,000 in settlement of car. The original cost of this car was $15,500.

Car No. 73.—Delivered April, 1867; assigned to Pittsburgh, Fort Wayne and Chicago railroad; remodeled as a silver palace car August 29th, 1870; ran on the Pittsburgh, Fort Wayne and
1963 Chicago railroad until June 30th, 1873, when it was condemned. There was received from the Pittsburgh, Fort Wayne and Chicago Railroad Company, April 24th, 1874, $7,000 in settlement. The original cost of this car was $8,500.

Car No. 74.—Delivered April, 1867; remodeled and came out Sep-

tember 21st, 1869, a silver palace car; ran on the Pittsburgh, Fort Wayne and Chicago road until June 30th, 1873, when it was condemned. There was received from the Pittsburgh, Fort Wayne and Chicago Railroad Company, April 24th, 1874, $7,000 in settlement of car. The original cost of this car was $8,500.

Car No. 75.—Delivered August 1st, 1867; a silver palace car; from 1870 and part of 1871 it ran on the Vandalia line; in shop the latter part of 1871; ran on the Pennsylvania lines from 1871 to 1872, when it was condemned. Settled for by the Pennsylvania Railroad Company, March 7th, 1873, $7,000 being received in settlement. The original cost of this car was $8,189.57.

Car No. 76.—A silver palace car; delivered August 1st, 1867; transferred from the New York and Chicago lines to shops for general repairs March 25th, 1871; came out of shops June 26th, 1873, from which time it ran on the Pennsylvania lines until July 22d, 1877, when it was destroyed by fire in Pittsburgh during the railroad riots. There was received from Allegheny county, January 24th, 1880, $6,495.06 in settlement of car and $1,326.91 in settlement of equipment. The original cost of this car was $9,912.48.

Car No. 77.—A compartment car, built by the Pittsburgh, Fort Wayne and Chicago Railroad Company on some plan of their own; regarded as worthless by Captain Torrey; lay idle at Chicago from January to August, 1871; ran as an extra from September 1st, 1872, until January 1st, 1873, on the Pittsburgh, Fort Wayne and Chicago line, when it was dismantled; lay in Allegheny yards
1964 until December 14th, 1874, when it was condemned. There was received from the Pittsburgh, Fort Wayne and Chicago Railroad Company June 24th, 1875, $7,000 in settlement. The original cost of this car was $12,595.54.

Car No. 78.—Built February 1st, 1868, by the Pittsburgh, Fort Wayne and Chicago Railroad Company on some plan of their own; deemed by Captain Torrey worthless; lay idle at Chicago January to August, 1871, from which time it ran as an extra on the Pittsburgh, Fort Wayne and Chicago road until January 1st, 1873, when it was dismantled in Allegheny yards, and lay there until December, 1874, when it was condemned. Settled for by the Pittsburgh, Fort Wayne and Chicago Railroad Company October 10th, 1875, $7,000 being received in settlement of car. The original cost of this car was $12,595.55.

Car No. 79.—Delivered July 29th, 1868, and assigned to Columbus, Chicago and Indianapolis Central railroad; ran between Columbus and Chicago; came out February 7th, 1870, a silver palace car; run on the Chicago and Columbus line until April 1st, 1873, when it ran as an extra between Chicago, Columbus, and Cincinnati, to August 1st, 1873. It was condemned October 16th, 1875. There was received from the Pittsburgh, Cincinnati and St. Louis Railroad Company, November 11th, 1875, $7,000 in settlement of car. The original cost of this car was $6,862.50.

Car No. 80.—Delivered July 29th, 1868; assigned to Columbus, Chicago and Indianapolis Central railroad; ran between Chicago and Columbus until December 11th, 1870. The railroad company

decided to take the car and build a new one in place of it. There was received from the Columbus, Chicago and Indianapolis Central Railroad Company, November 1st, 1873, $6,000 in settlement. The original cost of this car was $6,862.50.

Car No. 81.—A silver palace car; delivered September 23d,
1965 1868; assigned to New York and Washington lines, and ran thereon until August 7th, 1871; idle from August 7th, 1871, to September 1st, 1871; then ran in New York and Lynchburg lines until November 20th, 1871, when it was shopped, and again ran between New York, Washington, and Lynchburg; was sent to shop August 2d, 1872; came out March 1st, 1873, remodeled into an open Pullman; ran in New York and Washington lines until May 3d, 1874, when it was partly burned and sent to shop for repairs, after which it was transferred to the Lehigh Valley road; transferred to the St. Louis division April 11th, 1876; last service, December, 1876. There was received in settlement of car, as salvage (the car having been burned whilst at Pullman), from the Pittsburgh, Cincinnati and St. Louis Railroad Company (date not given), $1,132.35. The original cost of this car was $9,000.

Car No. 82.—Delivered September 23d, 1868; a silver palace car; assigned to New York and Washington lines; was sent to shop August 5th, 1871; came out of shop November 5th, 1871, when it was run on the New York, Washington and Lynchburg lines until August 19th, 1872, when it was sent to shop for remodeling; remodeled into an open Pullman car in 1873, and ran on the New York, Baltimore and Washington lines until June 1st, 1874; lay as an extra at Jersey City until November, 1874, when it was run on the Grand Rapids and Indiana railroad until December 26th, 1875; transferred to St. Louis division April 11th, 1876; last service December, 1876; sent to Pullman, where it is now stored. The original cost of this car was $9,000.

Car No. 83.—A silver palace car; delivered March 6th, 1869; assigned to New York and Washington lines; ran in New York, Washington, and Lynchburg lines until September, 1871, when it was transferred to the Southern division; received back April 10th, 1874, and transferred to the construction department for remodeling; remodeled into an open Pullman car, and again commenced service on the Baltimore and Danville road; sold to the Baltimore
1966 and Ohio Railroad Company, January 5th, 1882. There was received June 10th, 1882, $7,000 in settlement of car. The original cost of this car was $9,750.

Car No. 84.—Delivered March 1st, 1869, and assigned to the New York and Washington lines; ran in the New York, Philadelphia, Washington, and Lynchburg lines until May, 1871, when it was transferred to the Southern division, September, 1871, where it remained until April 10th, 1874; transferred to the construction department and remodeled into an open Pullman car, and commenced service as such May 29th, 1875, on the Baltimore, Lynchburg and Danville road, where it remained until sold to the Baltimore and Ohio Railroad Company, January 5th, 1882. There was

received June 10th, 1882, $6,750 in settlement of car. The original cost of this car was $9,750.

Car No. 85.—Delivered February 12th, 1869; a silver palace car; assigned to Pittsburgh, Fort Wayne and Chicago road; ran in New York and Chicago lines; was burned December 23d, 1870. There was received from the Pennsylvania Railroad Company, March 7th, 1873, $11.982.76 in settlement of car. The original cost of this car was $9,855.32.

Car No. 86.—Delivered February 12th, 1869; a silver palace car, and assigned to Pittsburgh, Fort Wayne and Chicago road; remained in service on that road until February 24th, 1873; was remodeled into a single drawing-room car; its last service was June 3d, 1887. There was received from the Pittsburgh, Fort Wayne and Chicago Railroad Company in lieu of repairs $5,406.56; car was sent to Pullman for storage, where it now is. The original cost of this car was $9,855.33.

Car No. 87.— Delivered February 20th, 1869; a silver palace car; commenced running on the New York and Louisville lines; was remodeled in 1871 into an open Pullman car; was used on
1967 the Pennsylvania local lines, and sent to Altoona, October, 1877, to be condemned. There was received from the Pennsylvania Railroad Company in lieu of repairs, October 16th, 1879, $4,000. The original cost of this car was $9,500.

Car No. 88.—Delivered February 20th, 1869; a silver palace car; assigned to the Pennsylvania railroad; remodeled in 1871 into an open Pullman car; was always run on the Pennsylvania local and through lines; sent to Altoona, October, 1877, to be condemned, where it now is; last service, March 11th, 1877. There was received from the Pennsylvania Railroad Company, October 16th, 1879, in lieu of repairs, $4,000. The original cost of this car was $9,500.

Car No. 89.—A silver palace car; delivered April 6th, 1869; commenced service in New York and Louisville lines; remodeled March 23d, 1872, into an open Pullman car; general service not known; sent to Altoona, March, 1878, where it now is to be condemned. There was received from the Pennsylvania Railroad Company in lieu of repairs, November 16th, 1879, $4,000. The original cost of this car was $8,902.65.

Car No. 90.—Delivered April 6th, 1869; a silver palace car; assigned to Pennsylvania railroad; commenced service on the New York and Louisville line; shopped in 1871, and remodeled into an open Pullman car; was always run on the Pennsylvania through and local lines; last service, July 18th, 1874, when it was condemned. There was received from the Pennsylvania Railroad Company, April 19th, 1875, $7,000 in settlement of car. The original cost of this car was $8,902.65.

Car No. 91.—Delivered June 25th, 1869; assigned to Pennsylvania railroad; from May, 1872, to September, 1874, it ran between St. Louis, Cincinnati, and Chicago, after which it began running
1968 on the lines of the Pennsylvania railroad; was remodeled into an open Pullman car, April 26th, 1873; ran on the Pennsylvania lines until October, 1885, when it was sent to Pullman to

be stored, where it now is. There was received from the Pennsylvania railroad, June 7th, 1879, $4,000 in lieu of repairs. The original cost of this car was $10,885.88.

Car No. 92.—Delivered June 25th, 1869; a silver palace car, named "Jeffersonville;" assigned to the Pennsylvania Railroad lines; commenced service on New York and Louisville line; was wrecked on Pennsylvania road March 22d, 1872. There was received from the Pennsylvania Railroad Company, March 20th, 1873, $9,000 in settlement of car. The original cost of this car was $10,885.88.

Car No. 93.—Delivered April 12th, 1870; assigned to New York and Cincinnati lines; ran on New York and Pittsburgh lines until November, 1871, when it was assigned to Pennsylvania lines; shopped in 1872, and remodeled into an open Pullman car; continued running on the Pennsylvania lines until 1875, when it was condemned and stored at Altoona, where it now is. There was received from the Pennsylvania Railroad Company, June 7th, 1879, $4,000 in lieu of repairs. The original cost of this car was $9,510.67.

Car No. 94.—Delivered April 12th, 1869; a silver palace car; commenced service on New York and Cincinnati lines, where it remained until June, 1871; lay as an extra at Louisville during June, July, and August, 1871, when it commenced running on the New York, Louisville and Cincinnati lines, where it remained until December, 1871, when it ran as an extra in Cincinnati district until June, 1872, when it was remodeled into an open car; again commenced running on Pennsylvania Railroad lines, and continued running until March 31st, 1874, when it was shopped at Altoona for repairs; came out October 16th, 1874; lay as an extra at Washington until December, 1877, when it was sent to Altoona
1969 and condemned, where it now is. There was received from the Pennsylvania Railroad Company, October 17th, 1879, $4,000 in lieu of repairs. The original cost of this car was $9,510.66.

Car No. 95.—Delivered April 30th, 1869; a silver palace car; assigned to Pennsylvania railroad, and commenced on New York and Cincinnati lines, whereon it was continued until June, 1871, when it was transferred to the Pittsburgh and Chicago lines, where it remained until November 16th, when it was sent to shop, and then returned to Pennsylvania Railroad lines, where it remained until August, 1872, when it was remodeled and run on Grand Rapids and Indiana railroad, July to September, 1874, when it was transferred to the Washington and Rochester line; was condemned May 1st, 1876, and stored at Altoona, where it now is. There was received from the Pennsylvania Railroad Company, July 23d, 1879, in lieu of repairs, $4,000. The original cost of this car was $9,510.67.

Car No. 96.—Delivered April 30th, 1869; a silver palace car; assigned to Pennsylvania lines; commenced service in New York and Cincinnati lines; ran in St. Louis and Vandalia part of 1870; was remodeled into an open Pullman car in 1872; remained in

service on Pennsylvania lines until October, 1875, when it was condemned and stored at Altoona, where it now is. There was received from the Pennsylvania Railroad Company, October 17th, 1874, $4,000 in lieu of repairs. The original cost of this car was $9,510.66.

Car No. 97.—Delivered August 29th, 1869; a silver palace car; assigned to Pennsylvania railroad, and commenced service in the New York and Chicago lines; was wrecked on the Pennsylvania railroad February, 1873, and remodeled into an open Pullman car; commenced running in Williamsport and Oil City line July 30th, 1873; continued thereon until November, 1873, from which
1970 time ran in the Washington, Buffalo, and Rochester lines and Pennsylvania through and local lines until May 16th, 1879, when it was condemned and stored at Altoona, where it now is. There was received from the Pennsylvania Railroad Company July 23d, 1879, $4,000 in lieu of repairs. The original cost of this car was $8,431.69.

Car No. 98.—Delivered July 13th, 1870; a silver palace car; assigned to Pennsylvania Railroad lines; commenced service in New York and Chicago lines, and continued thereon until 1872, when it was remodeled into an open Pullman car and again used on the Pennsylvania lines until June 7th, 1878, when it was condemned and sent to Altoona, where it now is. There was received from the Pennsylvania Railroad Company, October 17th, 1879, $4,000 in lieu of repairs. The original cost of this car was $5,000.

Car No. 99.—Delivered in 1866; bought by the Central Transportation Company in 1869; cut up in West Philadelphia yards May 26th, 1870. There was received from the Pennsylvania Railroad Company, March 7th, 1873, in settlement of car, $7,000. The original cost of this car was $5,000.

Car No. 100.—Built in 1866; sold to the Central Transportation Company in 1869; remodeled into a silver palace car January 17th, 1870; assigned to Louisville, Cincinnati and Lexington road; continued running on that road until December, 1874, when it was condemned and sent to Altoona, where it now is. The original cost of this car was $5,000.

Car No. 101.—Built in 1866; bought by the Central Transportation Company, March, 1869; kept on Baltimore and Ohio road until 1870, when it was condemned. There was received from the Baltimore and Ohio Railroad Company, April 12th, 1873, $1,000 in settlement of car; in lieu of repairs, $3,000. The original cost of this car was $5,000.

1971 Car No. 102.—Built in 1866; bought by the Central Transportation Company in March, 1869; condemned and cut up December 31st, 1869, and was therefore never transferred to the Pullman Company. There was received by the Pullman Company from the Pennsylvania Railroad Company, March 7th, 1873, $7,000 in settlement. The original cost of this car was $5,000.

Car No. 103.—A silver palace car; delivered June 14th, 1869; assigned to the Ohio and Mississippi railroad and continued to run on that line until 1877, when it was cut up. There was received in settlement of car, September 30th, 1882, from the Ohio and Missis-

sippi Railroad Company, $4,000. The original cost of this car was $6,736.45.

Car No. 104.—Delivered October 18th, 1869; a silver palace car; assigned to the Pittsburgh, Cincinnati and St. Louis road, and continued in use on that road until December, 1884, when it was condemned, and is now being used by the Pittsburgh, Cincinnati and St. Louis road as a coach. There was received November 11th, 1875, from the Pittsburgh, Cincinnati and St. Louis Railroad Company, $7,000 in settlement of car. The original cost of this car was $10,080.29.

Car No. 105.—Delivered October 18th, 1869; a silver palace car; assigned to Pittsburgh, Cincinnati and St. Louis road, in which service it remained until August 30th, 1874, when it was condemned, and is now being used by the Pittsburgh, Cincinnati and St. Louis railroad as a coach. There was received in settlement of car from the Pittsburgh, Cincinnati and St. Louis Railroad Company, November 11th, 1875, $7,000. The original cost of this car was $10,080.28.

Car No. 106.—A silver palace car, delivered September 14th, 1869; ran in Cincinnati and Chicago lines by way of Lima until that was discontinued, and then by way of Richmond until May 1st,
1972 1871, when it was transferred to the Southern division; received back June 30th, 1872, and commenced running in New York and Chicago lines, where it remained until June 1st, 1874, when it was remodeled into an open Pullman car; ran in Cincinnati, Chicago and Detroit lines until 1879, when it was transferred to the Chicago division; came back to construction department and was remodeled into a hunting car named "Izaac Walton." This car is still running. There was received, September 20th, 1878, in lieu of repairs, from the Cincinnati, Hamilton and Dayton and Pittsburgh, Cincinnati and St. Louis Railroad Companies, $3,500. The original cost of this car was $8,511.60.

Car No. 107.—A silver palace car; delivered September 14th, 1869; assigned to Cincinnati, Hamilton and Dayton road; ran in Cincinnati and Chicago lines by way of Lima until that was discontinued, then by way of Richmond; was transferred to Southern division May 1st, 1871; received back June 30th, 1872; remodeled in 1874 into an open Pullman car; ran in Cincinnati, Chicago and Detroit lines until 1878, when it was remodeled into a hunting car named "Davy Crockett," and is still running. There was received from the Cincinnati, Hamilton and Dayton and Pittsburgh, Cincinnati and St. Louis Railroad Companies, September 20th, 1878, in lieu of repairs, $3,500. The original cost of this car was $8,511.60.

Car No. 108.—A silver palace car; delivered October 17th, 1869; commenced service in the New York and Washington lines; was transferred in 1874 to Cincinnati, St. Louis and Louisville, where it remained until 1875, and was in that year transferred to the St. Louis division; its last service was in December, 1876, when it was condemned and sent to Detroit to be stored, where it now is. The original cost of this car was $9,750.

Car No. 109.—A silver palace car; delivered October 17th, 1869; commenced service in the New York and Washington lines;
1973 remained thereon until May 7th, 1874, when it was remodeled into an open Pullman car; ran in Cincinnati, St. Louis and Louisville lines until April, 1875, when it was shopped, and on coming out of shop, July 1st, 1875, was transferred to St. Louis division; its last service was December, 1876; it was condemned and ordered to be stored at Detroit, where it now is. The original cost of this car was $9,750.

Car No. 110.—A silver palace car; delivered August 28th, 1869, and assigned to Pennsylvania railroad; was continued on that road or its local lines until it passed out of service; was remodeled into an open Pullman car in March, 1873. There was received from the Pennsylvania Railroad Company, October 17th, 1879, in lieu of repairs, $4,000. The original cost of this car was $10,010.67.

Car No. 111.—A silver palace car; delivered August 28th, 1869, and assigned to the Pennsylvania railroad; continued in use on that line or local lines until condemned; the last service was September 14th, 1877; was then sent to Altoona, where it now is. There was received from the Pennsylvania Railroad Company, in lieu of repairs, October 17th, 1879, $4,000. The original cost of this car was $10,010.66.

Car No. 112.—Delivered December 18th, 1869; a silver palace car; assigned to the Northern Central railroad, and continued in use on that road until October, 1877, when it was condemned and sent to Altoona, where it now is. There was received from the Pennsylvania Railroad Company, October 17th, 1889, in lieu of repairs, $4,000. The original cost of this car was $9,504.12.

Car No. 113.—Delivered December 16th, 1869; a silver palace car; assigned to Northern Central road; remained on that
1974 line or on Pennsylvania local lines until November 11th, 1876, when it was condemned and sent to Altoona, where it now is. There was received from the Pennsylvania Railroad Company, October 17th, 1879, $4,000 in lieu of repairs. The original cost of this car was $9,333.57.

Car No. 114.—A silver palace car; delivered October 25th, 1869; assigned to the Pennsylvania railroad; remodeled into an open Pullman car in 1872; was loaned to Grand Rapids and Indiana railroad July, 1874, to September, 1874, when it was returned and commenced running between Washington and Pittsburgh until November, from which time it has been running between Washington, Buffalo, and Rochester; its last service was September 18th, 1877, at which time it was condemned and sent to Altoona, where it now is. There was received from the Pennsylvania Railroad Company, October 17th, 1879, in lieu of repairs, $4,000. The original cost of this car was $10,419.22.

Car No. 115.—A silver palace car; delivered October 20th, 1869; assigned to Pennsylvania railroad, and remained at Pennsylvania through lines substantially until June, 1872, when it commenced running between New York, Oil City, and Erie, where it remained until October, 1873; destroyed by fire at Pittsburgh in the riots of 1877.

There was received from Allegheny county, January 24th, 1880, in settlement of car $6,495.07, and in settlement of equipment $1,208.18.

Car No. 116.—Built in 1866; bought by the Central Transportation Company in 1869; was run in the Lima line between Cincinnati and Chicago during 1870; was transferred to Marietta and Cincinnati railroad and was condemned in 1871. There was received from the Baltimore and Ohio Railroad Company $3,000 in lieu of repairs. The original cost of this car was $5,000.

1975 Car No. 117.—Built in 1866; bought by the Central Transportation Company 1869; remodeled into a silver palace car February 1st, 1870; assigned to Louisville, Cincinnati and Lexington road; remained running on this road until October 21st, 1873, when it was condemned, and is now stored at Altoona. The original cost of this car was $5,000.

Car No. 118.—Built in 1866; bought by the Central Transportation Company 1869; was run on Pennsylvania railroad and cut up at West Philadelphia yard June 22d, 1870. There was received in settlement from the Pennsylvania Railroad Company, March 7th, 1873, $7,000. The original cost of this car was $5,000.

Car No. 119.—A silver palace car; delivered November 23d, 1869, assigned to Pennsylvania railroad; remained running on Pennsylvania lines until June, 1872, when it commenced running between New York, Oil City, and Erie; remained on that line until October, 1873, when it again ran on the through and local lines until March 10th, 1879, when it was condemned and cut up. There was received from the Pennsylvania Railroad Company $4,000. The original cost of this car was $10,000.

From the history of the cars, as above stated, it appears that there died, as the phrase goes, in 1870:—

Cars Nos. 3, 6, 7, 10, 18, 21, 24, 28, 42, 53, 56, 58, 59, 63, 68, 85, 99, 101, and 118, making in all 19

There died in 1871, cars Nos. 4, 5, 19, 25, 26, 29, 31, 33, 34, 35, 43, 44, 45, 46, 48, 49, 50, 51, 60, 61, 62, 80, and 116, making in all 23

There died in 1872, cars Nos. 2, 9, 11, 12, 15, 20, 32, 47, 64, 75, 77, and 92, making in all 12

There died in 1873, cars Nos. 8, 16, 27, 52, 55, 69, 70, 72, 73, 74, 78, 79, and 117, making in all 13

There died in 1874, cars Nos. 1, 90, 100, 104, and 105, making in all 5

There died in 1875, car 37 1

1976 There died in 1876, cars Nos. 30, 81, 82, 108, 109, and 113, making in all 6

There died in 1877, cars Nos. 36, 38, 54, 71, 76, 88, 94, 103, 111, 112, 114, and 115, making in all 12

There died in 1878, cars Nos. 39, 40, 65, 67, 87, 89, 96, 98, and 110, making in all 9

There died in 1879, cars Nos. 22, 93, 95, 97, and 119, making in all 5

There died in 1880, cars Nos. 83 and 84, making in all 2

There died in 1881, car No. 13	1
There died in 1882, none	
There died in 1883, car No. 23	1
There died in 1887, cars Nos. 14, 57, and 86, making in all	3
There died in 1889, car No. 91	1
Making in all	113
Four of the cars, Nos. 17, 41, 102, and 66, were not transferred to the Pullman Company, because of their having been destroyed by casualties in the latter part of 1869 or early part of 1870, before the contemplated transfer took place	4
The number of cars now running is	2
Total	119

There are now stored at Altoona and elsewhere of the cars classed as "dead:" Nos. 13, 14, 22, 23, 30, 35, 38, 42, 57, 65, 71, 82, 86, 87, 88, 89, 91, 93, 94, 95, 96, 97, 98, 100, 108, 109, 110, 111, 112, 113, 114, 117, 119, making thirty-three in all.

Of the above equipment, thirty-eight were silver palace cars. The original cost to the Central Transportation Company of its cars and equipment as estimated by Mr. Prichard from the Central Transportation Company's books, was $1,192,755.89, and as estimated by Mr. Isham, $906,000. The master's estimate corresponds nearly with that of Mr. Isham—say in round numbers, $950,000.

1977	There was received by the Pullman Company at varying dates between March, 1873, and October, 1882, various sums of money in settlement of cars amounting in the aggregate to	$475,439 32
	And in settlement of equipment	7,565 14
	Making the total amount received in settlement of cars and equipment as above	$483,204 46
	There was also received, from time to time within the interval above stated, from the several railroad companies as a substitute for and in lieu of repairs various sums amounting in the aggregate to	146,313 12
	Making the total amount received by the Pullman Company	$629,517 58
	Less amount expended in repairs by the Pullman Company	72,583 97
	Making total receipts to the Pullman Company from above sources, less expenses for repairs	$556,933 61

And in addition thereto there remains in the hands of the Pullman Company at the present time thirty-three cars stored at Altoona and elsewhere, for ten of which no money has been received from the railroads.

VIII. What, then, was the value of the rolling stock of the Central Transportation Company when transferred? As regards the equipment, that is to say, the furniture of cars, an appraisement and valuation was made on January 1st, 1870, and is presumably correct. The sum thus arrived at was $88,808.80. As regards the cars, a very large amount of testimony has been taken. The evidence presented is that of the officers of the Pennsylvania and other railroads on whose roads the cars were being operated; of Mr. Jackson, an expert car-builder; of Captain Torrey, and Mr. Goodman. Torrey and Goodman both came to the Pullman Company from the Central Transportation Company's service. Torrey subsequently left the Pullman Company, whilst Goodman remained, and is now one of its vice-presidents. Mr. Jackson's testimony, if pertinent to the issue, would be entitled to great weight; but he has not testified as to the value of the cars in 1870, nor has he
1978 given any evidence from which the value of the cars in 1870 can be gleaned. His evidence as to value is confined to an estimate made in 1887 of four condemned cars, then some twelve or fifteen years old, and which had been sold to his company with the expectation that they could be utilized by traveling showmen. His evidence is therefore not material. As to the other witnesses, it is necessary to consider the standpoint from which they have testified. The Pullman Company's witnesses have appraised the cars as vehicles, without any regard or account to the subsisting liabilities of the several railroads under their contracts; whilst Torrey, the only witness called by the Central Transportation Company, has included in his valuation what he calls "the accumulated liabilities, growing out of the failure of the railroad companies to fully comply with their contract obligations." It is clear, therefore, that the cars are in the testimony considered from a dual point of view. All of the witnesses agree, that if they are to be regarded simply as vehicles for the Pennsylvania railroad use, their chief value was in scrap, because in consequence of the light construction and other defects, they were not, as a rule, worth the cost of reparation for use over the territory in which their employment was contemplated. But they also agree in thinking that if a purchaser could be found they had a distinct money value, and this value, according to Mr. Gardiner, formerly general superintendent of the Pennsylvania railroad, was from $4,000 to $5,000 each, and, according to Mr. Goodman, if placed in good order and condition, to $6,000 each, "provided you had a place to use them." Was it possible to find a purchaser or a place to use them." Was it possible to find a place to use them? It appears from the testimony that there was at least some market for these cars, as, according to the evidence of Dr. Williams, the Central Pacific Railroad Company was then being equiped with cars of this character, and it may therefore be assumed that if cars of this character were being used on the Central Pacific they were also being used at the same time on other roads. But however this may be, there can be no doubt of the fact that
1979 there was "a place to use them," not only because of the stipulation contained in the contracts made with the Central

Transportation Company by the several railroads, and which afforded a place to use them for some eight years at least to come, but also because the contract made between the Pullman Company and the Pennsylvania railroad, made contemporaneously with the transfer of these cars to the Pullman Company, expressly provided that the cars should be repaired and used by the Pennsylvania railroad. That they were not wholly so used is true. Such, however, was the original intention of the parties, and as such use was specially stipulated for, it may be assumed that the cars were given a money value in the negotiations. Torrey's valuations of the cars and equipment was $1,100,000. This, it is conceded by him, was a rough estimate, made in a general way from his knowledge of the equipment as a whole, and included what he terms "the accumulated liabilities of railroads on account of their contracts not having been completely maintained." "There were cars," he says, "that were new, just out of the shops, that could have been sold for, he presumes, all they cost, and there were some that were very old." "The former class of cars," he thinks, "were worth about $10,000 or $12,000 apiece, and the value of the latter consisted chiefly in their value as scrap with a settlement of accumulated liabilities." Whilst Torrey's knowledge of the Central Transportation Company's equipment and his experience would entitle his estimate to great weight if properly made, it is clear that the reliance to be placed upon it is lessened by his own admission that it was roughly made, and derived from his general impression and knowledge of the equipment rather than from a separate ascertainment of the value of each car or a careful consideration of the value of the entire equipment and of the amount included in what he terms "the accumulated liabilities of the railroads."

Another indication of the value of the cars as vehicles, together with their equipment, is to be found in the settlements made with railroads other than the Pennsylvania and Fort Wayne. These settlements were as follows:

1980 Car.	Sold or delivered by—	Date of settlement.	Amount received in settlement of cars.	Received in lieu of repairs.
8	P. C. & St. L.	11/11/75	$7,000 00	
9	" "	11/11/75	7,000 00	
26	B. & O.	4/12/73	7,000 00	$3,000 00
27	P. C. & St. L.	11/11/75	7,000 00	
28	B. & O.	4/12/73	1,000 00	3,000 00
31	"	4/12/73	1,000 00	3,000 00
32	Phila. & Erie.	7/31/73	8,000 00	
33	B. & O.	4/12/73	1,000 00	3,000 00
36	Ohio & Miss.	9/30/82	4,000 00	
37	"	7/31/82	9,991 25	
43	I. C. & L.	5/15/73	2,500 00	
44	"	5/15/73	2,500 00	
45	B. & O.	4/12/73	1,000 00	3,000 00
53	Ohio & Miss.	7/31/82	9,991 26	
54	"	9/30/82	4,000 00	
55	Ala. C.	7/31/74	6,101 57	
61	B. & O.	4/12/73	1,000 00	3,000 00
62	"	4/12/73	1,000 00	3,000 00
63	"	4/12/73	1,000 00	3,000 00
64	"	4/12/73	1,000 00	3,000 00
66	P. C. & St. L.	1/12/72	6,000 00	
67	" "	11/11/75	5,000 00	
68	" "	11/11/75	6,000 00	
69	" "	11/11/75	7,000 00	
76	Allegheny county.	1/24/80	6,495 06	
79	P. C. & St. L.	11/11/75	7,000 00	
80	C. C. & I. C.	1/1/73	6,000 00	
81	" "	1/1/73	1,132 35	
83	B. & O.	6/10/82	7,000 00	
84	"	6/10/82	6,750 00	
101	"	4/12/73	1,000 00	3,000 00
103	Ohio & Miss.	9/30/82	4,000 00	
104	P. C. & St. L.	11/11/75	7,000 00	
105	" "	11/11/75	7,000 00	
106	Cinn., H. & Dayton.	9/20/78	.....	3,500 00
107	P. C. & St. L.	9/20/78	.....	3,500 00
115	Allegheny county	1/24/80	6,495 07	
116	B. & O.	4/12/73	1,000 00	3,000 00
			$161,956 56	$40,000 00

Total amount received in settlement of thirty-eight cars	$161,956 56
Total amount received in lieu of repairs thereon	40,000 00
Furniture and equipment for thirty-eight cars as per appraised value	25,036 30
Making the total value of thirty-eight cars and their equipment	$226,992 86

1981 or $5,973.50 per car. If this valuation be applied to one hundred and nineteen cars (the Pullman Company having received one hundred and fifteen, and also having received from the railroads amounts due on four cars), the total value of cars and equipment as of 1870 would be $710,846.50.

Another method of arriving at the valuation of the car and equipment as vehicles which suggests itself is that of the first cost, with a suitable deduction for wear and tear. The original cost of the entire outfit of cars and equipment as ascertained by the master is.....	$950,000 00
An average depreciation, notwithstanding all possible maintenance predicated upon the lifetime of the car, is estimated by the master at twenty-five per cent..	237,500 00
Leaving as possible value of cars and equipment.	$712,500 00

The foregoing figures have been reported by the master because he deems it proper to inform the court the results of an examination of the property from different points of view. In doing so, however, he desires to be understood as stating that on account of the peculiar nature of the contracts it is impossible, in his judgment, to correctly value the cars apart from the obligations to maintain and use them set forth in the contracts. In this connection it must be remembered also that whilst it may be true that in 1870 all contracts made between railroad companies and sleeping car companies cast upon the former the maintenance of cars, it cannot be assumed that the Pennsylvania railroad would have been willing to have assumed this obligation with its knowledge of the Central Transportation Company's equipment but for the fact that they were already bound so to do under the terms of the assigned contracts.

VIII. The Central Transportation Company assigned to the
1982 Pullman Palace Car Company at the time of the lease all its right, title, and interest in and to all of the inventions secured by letters patent, reissues, and extensions mentioned in the following schedule:

Patents No. 16159, granted December 2d, 1856, to T. T. Woodruff and reissued No. 1439, March 17th, 1863, for improvement in railroad-car seats and coaches.

No. 16160, granted December 2d, 1856, to T. T. Woodruff, for improvement in railroad-car seats and coaches.

No. 24257, granted May 31st, 1859, to Theodore T. Woodruff, for improvements in seats and coaches for railroad cars.

No. 26,942, granted January 24th, 1860, to Theodore T. Woodruff, for improvement in seats and couches of railroad cars.

No. 24563, granted June 28th, 1859, to Edward C. Knight, for improvement in arranging couches in railroad cars.

No. 25570, granted September 27th, 1859, to Edward C. Knight, for improved mode of arranging couches in railroad cars.

No. 27297, granted February 28th, 1860, to Edward C. Knight, for improvement in couches for railroad cars.

No. 11699, granted September 19th, 1854, to H. B. Myer, for improvement in converting railroad-car seats into beds or lounges, reissued May 3d, 1859, No. 711, and October 8th, 1861, No. 123, whole number 1227, and extended seven years from September 19th, 1868.

No. 21099, granted August 3d, 1858, to Ely Wheeler, for improvement in sleeping cars for railroads, and reissued September 18th, 1860, No. 1043.

No. 25499, granted September 20th, 1859, to Ely Wheeler, for improvement in railroad-car seats.

No. 29137, granted July 17th, 1860, to William A. Brown, for improvement in couches for railroad cars.

No. 2975, whole number 33979, granted December 24th, 1861, to William A. Brown, for improvement in railroad-car ventilators.

No. 3254, granted May 18th, 1858, to J. B. Creighton, for
1983 improvement in railroad cars for day and night service, and reissued September 21st, 1858, No. 602, and reissued to Jacob H. Myer, May 4th, 1869.

No. 21600, granted September 28th, 1858, to J. B. Creighton, for improvement in couches in railroad cars.

No. 22364, granted December 21st, 1858, to Plymon B. Green, for improvement in seats and sleeping couches for railroad cars.

No. 71258, granted November 19th, 1867, to Jonah Woodruff, for improvement in sleeping cars.

No. 30517, granted October 23d, 1860, to Edward Burke, for improvement in seats and couches for railroad cars, also a license to use patent "car coupling" granted to the Central Transportation Company, August 16th, 1866, under patent issued July 3d, 1860, to I. W. Van Houten, Henry Wood, Joseph Wood, and E. R. Bennett.

And also all right, title, and interest in and to any and all letters patent, patent rights, or inventions, or right of use of inventions connected with or in any way appertaining to railway cars belonging to the Central Transportation Company, whether enumerated in the foregoing schedule or otherwise. The price paid by the Central Transportation Company to the patentees for their outstanding interests in the several patents above referred to was $266,000. No revenue appears to have been derived from the use of these patents, and they have long since run out. The only use to which they were put by the Pullman Company was in connection with the old Central Transportation Company's cars and equipment. Their value as estimated by the master is the price paid for them by the Central Transportation Company at the time of the lease.

IX. It appears that at the time of the execution of the lease there was a balance of cash in the treasury of the Central Transportation Company of $63,998.69, and that the debts of the Central Transportation Company as scheduled amounted to $46,983.08. The original intention of the parties was that the Central Transportation Company should pay over to the Pullman Company $63,998.69,
1984 and that the latter company should pay its indebtedness, then amounting to $46,983.08, and also all other debts and claims, not exceeding the sum of $63,998.69. In point of fact, by arrangement, as a matter of convenience, the said indebtedness of $46,983.08 was actually paid by the Central Transportation Company, and there was transferred and paid over in cash to the Pullman Company on the thirteenth day of April, 1870, $17,000.

X. The contracts assigned have been heretofore described. There is no separate appraisal or valuation of these contracts contained in the evidence, and when their peculiar nature and varying terms of duration and different stipulations with regard to maintenance of cars and liability for casualties are considered, it is difficult to see how any such separate valuation could be made. It is contended on behalf of the Pullman Company that as the corporate life of the Central Transportation Company was under the act of the 7th of April, 1849, limited to twenty years, and expired on December 30th, 1882; that the subsequent extension of corporate life for ninety-nine years under the act of 9th of February, 1870, had no effect upon its existing contracts, and that such of the contracts of the company as ran "during the continuance of incorporation," were not affected by the act of 9th of February, 1870, and therefore expired on December 30th, 1882. It is to be observed that such a construction is inconsistent with the Cincinnati, Hamilton and Dayton and Dayton and Michigan contract, which was to continue "during the continuance of the incorporation of the Central Transportation Company, not exceeding twenty years," and is also inconsistent with the presumed interpretation of the Pullman Company itself, as it appears from the evidence that it is today running its cars on the Indianapolis, Cincinnati, St. Louis and Chicago railroad under the assigned Central Transportation Company's contract with the Indianapolis and Cincinnati road, the duration of which was the continuance of the incorporation of the Central
1985 Transportation Company." But apart from this it appears that the act of 7th of April, 1849, whilst limiting the corporate life of the Central Transportation Company to the period above stated, also reserved the right to alter or amend the act in question. As the parties must be presumed to have contracted with notice and knowledge of the act, and as the right of the legislature to extend the corporate life of the company is undoubted, the master's conclusion is that the contracting parties obligated themselves, by the words used, for so long a period as the corporate life of the company was lawfully continued.

It is contended on the part of the Central Transportation Company that as contemporaneously with the lease the various contracts covering roads included in the Pennsylvania system, and which, as has been shown, expired at different dates, were canceled and exchanged for a new contract of the Pullman Company with the Pennsylvania railroad for fifteen years over its system, with the right to continue the use of the Central Transportation Company's cars, and with an obligation on the part of the railroad to continue to repair those cars; that the fifteen-year contract was accepted by all parties in interest as a substitute for the assigned contracts. The master is of the opinion that this contention is correct.

XI. At the time of the execution of the lease, amongst the railroads with which the Central Transportation Company had contracts were the Northern Central, the Pittsburgh, Fort Wayne and Chicago, the Columbus, Chicago and Indiana Central, and the New York and Washington through line. When these contracts were

originally made the roads in question were not leased or controlled by the Pennsylvania railroad. At the time of the execution of the lease, however, there were not only the roads above named, but other roads leased or controlled by the Pennsylvania railroad, with which roads no express contract existed, but over which the Central Transportation Company was running lines of sleepers.
1986 These roads were the Philadelphia and Erie, a road of two hundred and eighty-seven miles in length, and which with its connections formed the Pennsylvania railroad's connections between Philadelphia and Erie; the Pittsburgh, Cincinnati and St. Louis, a road of two hundred miles in length, and which gave the Pennsylvania Railroad system a connection with Cincinnati and St. Louis, and the Little Miami, Columbus and Xenia, a road of one hundred and ninety-six miles in length. With regard to the right of the Central Transportation Company to run its cars over the roads last mentioned there is no testimony, but in this connection it is necessary to refer to the Pennsylvania Railroad contract made originally with Woodruff, and assigned to the Central Transportation Company, and subsequently assigned by it to the Pullman Company. It provided for the running of sleeping cars "upon their road between Philadelphia and Pittsburgh, or such other points as the said Pennsylvania Railroad Company may desire." In view of the fact that the Central Transportation Company's supply of cars was naturally limited to the demand, and in view of the further fact that the principal portion of such demand came from the Pennsylvania railroad, it may be presumed that the understanding reached by both companies was that the cars of the Central Transportation Company were to run, not merely between Philadelphia and Pittsburgh, but also between other desired points, and that the termini above named, and not Pittsburgh, were in effect, substituted. In the light of the conduct of the parties, the contract should, in the opinion of the master, receive a broad and generous construction. It certainly cannot be assumed that the Pennsylvania railroad, whilst extending its system to the Great Lakes and the Mississippi river, intended to preclude itself from providing sleeping cars for its patrons, nor can it be said that the Central Transportation Company, with the opportunity afforded it of increasing business arising out of the acquisition by the railroad of new territory, desired to do otherwise than to accede to the desire of the
1987 railroad to run sleeping cars between such points, and the construction suggested is in accordance with the stipulation contained in the fifteen-year contract, which included, in terms, all leased or controlled lines of the Pennsylvania railroad. But apart from any obligations arising out of this contract, the fact is that so long as the Central Transportation contract over the main line continued, its exclusive nature prevented the use of the remaining portions of the route by any other sleeping car company, and compelled such railroad to use Central Transportation Company's cars in the interval.

XII. Passing to the consideration of the main question raised in the present reference, viz., what the Central Transportation Company

lost by the transfer of its property to the Pullman Company, the measure of damages as determined by the court requires the master to ascertain:—

(1.) What was the value to the Central Transportation Company in 1870 of the property transferred?

(2.) What was earned by the Pullman Company between January 1st, 1870, and January 1st, 1885, from the use of the property transferred?

(3) The difference between the amount so received by the Pullman Company and the rental paid by it to the Central Transportation Company for the above period.

(4.) The total amount to be paid by the Pullman Company, as of January 1st, 1885, deduced as above, together with interest thereon from January 1st, 1885, to date of final decree.

In this connection it was contended before the master on the part of the Pullman Company, that whatever property was appraised and paid for at its value in 1870 became thereby then the property of the vendee; that the price, that is, the appraised value, became at once a money demand which carried interest, but not earnings, and that the amount thus due is subject to the operation of the statute of limitations. It was moreover argued that in determining the value of the property in 1870, the master it to separately consider the various forms of property transferred and to deal with them separately; that as to the cars, he is to consider their
1988 value as vehicles and apart from the contracts; that as to the contracts, he is to ignore them in arriving at the valuation of the property transferred and consider them only in connection with earnings made by the use of the Central Transportation Company's cars; that the value of the furniture, equipment, cars, and the patents under which they were built are also to be disregarded in the ascertainment of the value of the property transferred, because the furniture and equipment were consumed in the making of earnings, and because no revenue whatever was derived from the patents. And finally, it was contended that if a capitalized valuation be made of all that the Central Transportation Company lost by parting with its property, that an apportionment must be made of such sum as between valid and invalid covenants, making the principal part of the sum so received stand for the covenants that have been declared void. After giving to this argument the most careful consideration, the master is unable to see how this contention is applicable to the issue before him. The right to any recovery whatever; the limitation of such recovery to the value of the cars; the application of the statute of limitations; the effect of the void lease, were all matters of argument before the court. They were there considered and determined. In its opinion the court has reviewed the various forms of property transferred to the Pullman Company, and its answer to the contention raised by the Pullman Company is that the Central Transportation Company is entitled to compensation for the property received. The order of reference as understood by the master limits his authority to the ascertainment of the extent or amount of the property received and

its value when received, together with its earnings since, less the amount paid as rent. General directions as to the course to be pursued by the master in arriving at the above valuation were stated by the court in its opinion. Whether in connection with this valuation there is to be a separate appraisal of each form of property transferred or the appraisal of the plant as a going concern, is a question which is left open, and which therefore, in the first instance, must be decided by the master.

1989 There is no estimate whatever given by any witness of the valuation of the contracts, nor can any such estimate be made by the master from any evidence contained in the record. There are estimates, as has been stated, of the value of the cars as vehicles, and also of the value of the cars with the accumulated liabilities of the railroad companies. There is testimony as to the cost of the patents at the time of their transfer, which is presumably their value at that time, and of the value of the equipment and furniture of the cars, and of the amount of actual money turned over to the Pullman company. There is evidence of the earning capacity of the Central Transportation Company at the time of its lease to the Pullman Company and for two subsequent years. There is evidence of the value of the stock of the Central Transportation Company in the market at the time of the transfer, and also of the value of the plant as a going concern. The latter is the standard of value adopted by the master, partly because there is no testimony by which any other value can be arrived at, and partly because if such testimony existed an accurate valuation of the property could not be reached by an addition of the separate values of the several forms of property which, taken together, constituted the plant in question.

XIII. With regard to the value of the property thus described several measures of value suggest themselves, none of which can be said to be absolutely accurate, but all of which serve to check or verify each other.

(1.) There is the testimony of Captain Torrey, who knew the property well, and who was a competent person to appraise it. Torrey's testimony was given before the present reference was ordered, and no estimate has been made by the Pullman Company of the value of the property as a plant, notwithstanding this challenge. The question, however, remains: whether Torrey's estimate is of a character calculated to impress one acting in a judicial capacity with the accuracy of the judgment which he arrived at. If so,

1990 his testimony is entitled to great weight. Torry says "that having knowledge of the prospective consummation of the lease and of the changes which were being made with regard to business, I anticipated a very considerable advance in the market value of the stock, and I contemplated making some arrangement for buying, upon margin, a block of the stock, and as a precaution to what I might be embarking in I exercised my best judgment in determining what element of value or risk there might be in such a proceeding. In that way I came to form a judgment of which I have a very clear recollection. It would be summed up thus: that I considered the tangible property of the company (cars and equipment)

at about fifty cents of the value of the capital stock—that was about $1,100,000—and not under occasion to hold myself to any particular careful calculation, of course; but that was a rough estimate I made at the time with the knowledge I had. As to the intangible property of the company, the contracts, patents, and so forth, that, of course, was a very difficult thing to consider. I only estimated in my own mind that it was worth far more than the balance of the par value of the stock." "The guarantee of the lines," he says, "were eight per cent. on $3,300,000, and therefore the inference was unquestionable to me that that was the minimum value, because parties had been willing to pay that for it. I then thought, and still think, that the property was worth more than that by an amount which only could be determined after events had passed." Again, he says: "It was the general estimate of the earning capacity, supported by the fact that another man in the business was willing to come in and put up that money for it." He also says "that the value of the tangible and intangible property of the company, including contracts, to the company itself or to a purchaser who desired to purchase its property for the purpose of carrying on its business as a going concern, would be over $3,000,000, based upon what was known to be its earning capacity and the then pressing coming demand for business. The earning capacity of the company in the past
1991 had never, as it appears, induced Torrey to purchase the stock, and taking his testimony as a whole, it appears to the master that whilst he undoubtedly says that he was influenced by his own judgment of the earning capacity of the plant, which he thinks would have been more profitable to its shareholders if the lease had not been made, that nevertheless the control-ing thought in his mind at the time, and which induced him to form so high an estimate of its value, was the rental to be paid by the Pullman Company and the increased business resulting from Pullman's acquisition of the property. By capitalizing the rental to be paid at eight per cent., which was, he says, the prevailing rate of money, he arrived at the conclusion that $3,300,000 was its minimum value.

(2.) Another basis of valuation is the value of the stock in the market at the time of the lease. This, it appears, fluctuated between fifty-six dollars and sixty dollars a share, the par being fifty dollars. The capital stock at par was worth $2,200,000. At fifty-six it was worth $2,464,000. At sixty it was worth $2,640,000.

(3.) A third basis of value is the earning capacity of the plant at the time of the lease. Its earning capacity prior to the acquisition of its patents was nine and a half per cent. on a capital of $2,000,000. The increase of the capital stock to $2,200,000 relieved the company of the payment to patentees of $50,000, and increased to that extent the net earnings of the company, so that at the time of the lease, on its capital of $2,200,000 it may be said to have been earning eleven and a half per cent. In the hands of the Pullman Company during the first year of the lease it earned, after making due allowance for interest on the capital employed in the purchase of new cars used in the Central Transportation division, and also after making allowance for the depreciation to which such cars were

subject, $327,742; and in the second year of the lease, after making a like allowance, it earned $317,665.51, and in this estimate no allowance is made for such of the Central Transportation Company's cars as were in use without the limits of the Central Transportation Company's territory. What allowance should be made therefor it is impossible to state under the evidence presented; that some allowance should be made is clear. It is conceded by the Pullman Company in its statement showing the gross earnings, gross expenses, and net earnings of Central Transportation Company's cars from January 1st, 1870, to December 31st, 1894, that the net earnings from January 1st, 1870, to March 31st, 1872 (a period of two years and three months), were $613,413.22, or in round numbers, $272,000 a year, notwithstanding the fact that during the years in question forty-two of its cars were retired by the Pullman Company and a portion of the residue of the cars employed on less favored routes. Considering, therefore, the company's earnings for two years anterior to the lease and for two years subsequent to the lease, it may be safely premised, in the opinion of the master, that the earning capacity of the plant on a capital of $2,200,000 was eleven and one-half per cent. The possibilities arising from such an income may be readily conceived, providing it was not actually barred by existing patents held by others from providing for the comfort of its patrons. It could have supplied out of its earnings enough cars to meet any competition, even if such earnings did not continue during the entire duration of the contracts.

1992

By putting aside four per cent. and compounding it at six per cent., the entire capital of the company could have been refunded in fifteen years, irrespective of the value of the cars at the expiration of that time. As their value at such time, even as scrap, would have been worth more than a year's earnings, we may reduce the time to fourteen years. The question remains, is fourteen years, under all of the circumstances of the case, a fair expectation of life with such earning capacity? If so, the value of the plant in 1870 was at least the par of the stock.

In arriving at an estimate of probable life, it must be remembered that a combination of capital with a definite purpose does not measure its life solely by contracts on hand; the combination of interests at its back constitutes a power which is continually exerted in many directions—not only to uphold, but to extend and spread, and it is against reason to suppose that the Central Transportation Company would have stood still and permitted its existence to cease with the term of its pending contracts had a consolidation with the Pullman Company not been effected. It had a present possession of the richest and most valuable territory of the United States; it had numerous contracts which continued so long as the company continued; it had other contracts which ran from seven to ten years, and as to them it had, at least, an expectancy of renewal which, with proper equipment, was not unlikely to lead to actual renewal. Can it be premised for a moment that the Pennsylvania Railroad Company, which was the backbone of the Central Transportation Company's system, would have deprived itself after

1993

1874 of all connections between New York and Washington on the one hand and Pittsburgh, Cincinnati, St. Louis and Chicago on the other? When the contract for the New York and Washington through line expired, is it not more than likely that if proper equipment had been supplied the contract would have been renewed? How could the Pennsylvania Railroad Company cancel, on December 2d, 1877, its contract with the Central Transportation Company, when its Pittsburgh, Fort Wayne and Chicago contract did not expire until May 31st, 1880? It was the exclusive privilege secured to the Central Transportation Company by its contracts that gave the property its chief value.

It is undoubtedly true that the cars of the Central Transportation Company were inferior to the cars of the Pullman Company; that its service, as well as its cars, was unsatisfactory is also true; but it is a fair presumption, had not so satisfactory an offer been made by the Pullman Company, that with the aid of its magnificent earning power it would have met the requirements of the situation. And it must be remembered in this connection that in 1870 the sleeping-car service was in its infancy, and without disparagement to
1994 the Pullman Company it must also be borne in mind that it was not at that period furnishing the only satisfactory car in the market. The Michigan Central, the Erie, and the New York Central were all running sleeping cars of various patterns, which, if inferior to the Pullman, were satisfactory to the traveling public and caused favorable comment from the officers of the Pennsylvania Railroad Company. At that day how was it possible for any man to say which of the various patents employed were most likely to be supplemented by the inventive genius of the country? It is a significant fact that the Wagner Car Company, the company then running on the New York Central, has ever since remained continuously in the field, and is today, to some extent at least, a competitor of the Pullman Company. Had the Pullman Company not made such a satisfactory offer, no doubt the struggle for supremacy which must then have arisen would have stimulated the Central Transportation Company to a much better service than that which afforded the Pennsylvania Railroad Company cause for complaint and comparison. That it was not hopelessly behind is certainly abundantly proven by the fact that its most formidable rival offered it $264,000 per annum for ninety-nine years. And whilst this offer was coupled with certain covenants declared to be unlawful, and with the conditions that if the earnings should fail to yield the sum in question the property could be returned and the lease canceled, such a contingency involved the absolute relinquishment of the entire territory thus acquired—a concession so important that it proves how confident the Pullman Company was at that time that the earnings would never be reduced below the sum paid.

In the master's judgment, fourteen years was, under all the circumstances of the case, a fair expectancy of probable life, and when the railroad development of the country between 1870 and 1885 is considered, it can scarcely be doubted that the Central Transportation Company's earnings, with proper equipment, would have in-

creased rather than diminished. With such earning capacity
1995 it was equally open to the company either to put four per cent. aside and compound it, as has been suggested, or to use it as a fund for the payment of interest on rolling stock acquired under a car trust, or otherwise. And in this connection the master desires to call the attention of the court to the large sums, amounting in the aggregate to considerably over half a million of dollars, paid to the Pullman Company for the retirement of the old Central Transportation Company's cars and the release of the obligations contained in the Central Transportation Company's contracts, which payments, it may be premised, the railroad companies would have been also willing to make to the Central Transportation Company in the event of its furnishing, or undertaking to furnish, a satisfactory service.

The several forms of valuation above considered may be summed up as follows: If Torrey's valuation is to be adopted, the capital stock of the company was worth about seventy-five dollars a share. If the public estimate is to be adopted, the stock was worth from fifty-six dollars to sixty dollars a share. If the estimate predicted on earnings, coupled with probable life, is to be adopted, the stock was worth at least fifty dollars a share. The two latter estimates serve to verify each other and to indicate that Torey's testimony is excessive.

They are both so far above the capitalized value of the rental agreed to be paid by the Pullman Company that either of them, if accepted, would leave a large margin for the illegal consideration which the court has directed shall be excluded from the account. Which of the two is to be preferred, and if the price of the stock on the street is to be accepted as the measure of value of the property when transferred, what figure is to be adopted? The estimate of probable life is hypothetical. The value of the stock on the street is a positive indication of the estimate placed on the property by the public. That it is not entirely a satisfactory measure of value must be conceded, but in the judgment of the master, supported as it is by the best independent estimate that the evidence affords,
1996 it should be accepted as the fairest criterion of value. This amount has, according to the testimony, been placed at from fifty-six dollars to sixty dollars a share; and whilst the evidence as to these values is not as satisfactory as the master would wish, it is nevertheless uncontradicted. As between the two quotations above named, which indicate the fluctuations of the stock in value, the master has taken the average; or in other words, a valuation of fifty-eight dollars a share. This, he believes, is as fair and equitable a valuation as is possible under the testimony, and he accordingly reports the value of the property, when received, is by him appraised at fifty-eight dollars a share, or $2,552,000.

XIV. An accurate ascertainment of the earnings without further evidence than that which has been produced before the master is impossible. The plant, upon the execution of the lease, became absorbed in a system in which the elements of new contracts, additional cars, and added lines entered so largely, that from the evi-

dence presented it is not possible to distinguish accurately the earnings applicable to the property assigned. General results, therefore, can only be ascertained.

Immediately after the lease the Central Transportation Company's system was organized into a division of the Pullman Company called the "Central Transportation division." The name of this division was afterwards changed to that of the "Central division," and by this name it is known today. It has never been consolidated with any other division, and it includes substantially all of the Central Transportation Company's territory. If this were all, the earnings of the Central division of the Pullman Company would seem to afford a key to the solution of the difficulty.

During 1870 and 1871 a separate account was kept of the earnings and expenses of this division. At that time a few lines had been added by the Pullman Company, but the territory was substantially that of the old Central Transportation Company.
1997 The result of these earnings has been previously referred to.

But even at that early date the absorption of the Central Transportation Company's plant and the divorcement of its cars from its contracts had begun. Some of its cars were being retired and others used elsewhere. The introduction of Pullman cars into the former territory of the Central Transportation Company had commenced, partly as a substitute for the Central Transportation Company's cars, and partly as a means of supplying the wants of increased travel.

In point of fact, however, whilst this division includes substantially all of the Central Transportation Company's territory, it includes also a very extensive additional territory which was not at the time of the lease operated by the Central Transportation Company.

The limits of the Central division of the Pullman Company were from time to time changed and enlarged. As organized at present it not only includes new territory, but numerous railroads built since 1870 within the original Central Transportation territory. There is no evidence which shows when the field was thus enlarged. It is apparent, therefore, that recourse must be had to other sources of information.

XV. The Pullman Company has produced, in addition to the evidence before alluded to, a table showing the net earnings of all of the Central Transportation Company's cars wherever used, from January 1st, 1870, to December 31st, 1884, as computed from their books. Having produced this estimate (the former estimate was produced on call), counsel for the Pullman Company there rested, contending that under their understanding of the order of reference they had complied with its terms. There was subsequently produced upon call of counsel for the Central Transportation Company, and after objection made and overruled, and upon the master's order, certain other evidence which will be subsequently considered. The net earnings of cars, as submitted by the Pullman Company, amount to $1,259,146.41. The earnings in ques-
1998 tion were made in part on the Central Transportation Company's lines and in part elsewhere.

The evidence shows that the cars were used as the public convenience required, and that in so doing Pullman cars were naturally substituted on the highroads of travel, and the cars of the Central Transportation Company in part relegated to lines on which they presumably earned less money. Many of them were also retired. The measure of earnings suggested makes no allowance for the earnings of the Pullman Company's cars running on Central Transportation Company's routes, under Central Transportation Company's contracts, and from what has been before stated and from the figures subsequently produced, it appears that by far the larger amount of money earned by the Pullman Company during the lease came from the operation of its own cars under the Central Transportation Company's contracts. If this estimate of earnings is to be accepted, the earnings of the Central Transportation Company's property during the lease are measured solely by the use made of its cars. Such a construction appears inequitable. The earnings of the property transferred were expected by the lessee to produce in its hands a sufficient margin to justify a payment of $264,000 to the lessor for ninety-nine years. It can hardly be assumed that the Pullman Company was willing to pay any such sum as that specified in the lease for the use of the Central Transportation Company's cars, or for the right to run such cars alone under the Central Transportation Company's contracts.

The Pullman Company is not to be regarded as a trustee; it is not called upon to reimburse the Central Transportation Company by giving it earnings, nor is it required to account to the latter company for such use of its property as it might properly have made whilst in his hands, but having elected to use it, making the fullest use of the most valuable and the less use of the least valuable portion, it cannot claim a credit for rental and restrict a counter-credit to the receipts derived from the use only of that portion of the property which was of the least value.

1999 Having produced this testimony, counsel for the Pullman Company then rested its case, contending that having shown the employment of the cars, and having given their earnings whenever used, and a statement of the moneys received for cars that were retired, they had complied with the order of court as they understood it. It was further argued that the statute of limitations must be considered by the master in any account taken under this order.

XVI. The evidence subsequently produced by the Pullman Company after objection is as follows:

(1.) A statement of the earnings and expenses of the Central Transportation division for 1870 and 1871 and for three months of 1872.

This has been previously referred to.

(2.) Certain statements of the company for each year from July, 1874, to July, 1885, inclusive, and which are known in the testimony as "analytical statements."

These statements, which it appears were not made prior to July, 1874, purport on their face to contain a statement of gross earnings

and expenses for each division in detail. They show the number of cars operated in each division of the company, the gross earnings and gross expenses and total net earnings of each division, and the gross and net earnings per car in each division.

Counsel for the Pullman Company, whilst presenting these statements, prefaced their production by stating that they were furnished subject to certain specific qualifications and limitations; that they do not belong to the regular and public accounts; that they are private statements of memoranda prepared for reference and guidance of the persons working in the accounting department; that they were intended to facilitate the working of the machinery of that department. For example, in dealing with the average number of cars counted as operated in each division, they deal only with the average number of cars which earned ten dollars or over in one month. That these statements were not intended to
2000 be and are not complete exhibits of the business of each division, and taken by themselves alone would be misleading though useful for the purposes in the accountant's work for which they were made.

From an examination of them it appears that the most profitable division of the Pullman Company was the Central division. This fact may be significant. It is, however, to be taken in connection with the further fact that the separation of territory by the Pullman Company into divisions is purely arbitrary, and that the Central division in nowise corresponds with the former Central Transportation Company's territory. Counsel for the Central Transportation Company have taken from these analytical statements the earnings of the Central division of the Pullman Company from July, 1874, to July, 1885, inclusive, and have made allowance for new capital put into that division by the Pullman Company from time to time, and have added the results thus obtained to the earnings of the Central Transportation division for 1870 and 1872 as furnished, and contended that the sum thus reached, after allowance being made for interest on additional capital and on depreciation of cars, represents the earnings of the Central Transportation Company's property during the period in which it remained in the hands of the Pullman Company. This estimate, if correct, shows the Pullman Company had a surplus of earnings out of this plant amounting to over $3,000,000.

This measure of value does not appear to be sound. The analytical statements not only refer to another territory, but the large profits shown therein by the counsel for the Central Transportation Company are mainly due to the fact that the operation of sleeping cars over such territory was an enormously profitable business, and out of the profits thus derived the Pullman Company's share is restricted to six per cent. for interest and six per cent. for depreciation, and the residue of the profit is credited to the Central Transportation Company, notwithstanding the fact that the greater portion of it was earned by Pullman cars and by the use of Pullman capital.

2001 The Central Transportation Company's claim is also in part made up of earnings derived from the Central division after the assigned contracts had expired. These earnings, it is said, the Central Transportation Company is entitled to, because the value of the Pennsylvania Railroad Company's contract, which ran for fifteen years, was presumably the value of the contracts with that system which the Central Transportation Company contemporaneously assigned to the Pullman Company.

In this connection it must be remembered that what the Central Transportation Company parted with was not only its contract with the Pennsylvania Railroad Company and its leased lines, but certain other contracts as well, and also all of its other property, and that what the Pennsylvania Railroad Company desired to receive from the Pullman Company at the time in question was not only Pullman's cars and service, but Pullman Company's connections as well.

For the reasons as above stated, the Pennsylvania Railroad Company was willing and desirous to make a contract with the Pullman Company in 1870, and in order that this should be effected it was necessary that there should be an understanding reached as to its outstanding contracts with the Central Transportation Company. But it does not follow that the substituted contract and the assigned contract were equal in value. Without the assignment the substituted contract could not have been made. It was an element in the conduct of the negotiations; but it was not property received by the Pullman Company from the Central Transportation Company, and it is only as to such property that the inquiry as to earnings, as understood by the master, is directed.

3. The Pullman Company has also produced a statement showing by contracts the result of the operation to the expiration date of each contract of sleeping cars over the territory covered by the sixteen Central Transportation Company's contracts which were assigned to the Pullman Palace Car Company.

2002 This table, so far as it goes, presents a nearer approach to the solution of the question than any of the tables above alluded to. This conclusion is predicated upon the assumption that the true basis of earnings is to be arrived at by considering, so far as is possible, the cars and contracts together. In this table the gross earnings, gross expenses, and net earnings of the cars necessary to operate each contract, from January 1st, 1870, to the date of its expiration, is computed. There is also stated the amount of new capital invested by the Pullman Company. The capital so invested is allowed interest at the rate of six per cent. per annum, and a like charge is allowed for depreciation.

If this estimate is to be accepted, the account would stand thus:

Amount paid as rental from January, 1870, to January, 1885, without computation of interest.....	$3,960,000 00
Amount of earnings deduced from the above table..	2,298,875 80
Leaving as a balance overpaid by the Pullman Company on January 1st, 1885.....	$1,661,124 20

The amount of earnings contained in the statement should, in the master's judgment, for reasons previously stated, be augmented as follows:

Earnings should be given on Cincinnati, Hamilton and Dayton contract and Dayton and Michigan contract to September 26th, 1884.

Earnings should be given until January 1st, 1885, on the following contracts:

Bellefontaine, Marietta and Cincinnati, Central Ohio, Indianapolis and Cincinnati, Columbus, Chicago and Indiana Central, Terre Haute and Indiana, Vandalia and Terre Haute, Jefferson, Madison and Indianapolis, and Louisville, Cincinnati and Lexington.

2003 Earnings should be given on the United Railroads of New Jersey, Philadelphia and Erie, Pittsburgh, Cincinnati and St. Louis, and the Little Miami railroads from the date of the establishment of lines over such roads to December 2d, 1877, when the Pennsylvania Railroad Company's contract terminated.

Such additions, if allowed, would increase the number of cars required and the capital invested whilst operated. The amount of capital invested whilst operated, as given in the table, amounts to $1,170,764.02. Interest is charged on various sums which go to make up this amount, the total interest charged being $706,957.05.

During a very considerable portion of this time there was in the hands of the Pullman Company $556,933.61, which had been received by the Pullman Company on various dates, beginning in 1873, from the retirement of Central Transportation Company's cars. Whilst the Central Transportation Company is bound by any reasonable use made by the Pullman Company of its cars, even to their retirement, if deemed necessary, it would be manifestly inequitable to measure such use by the destruction of a portion of the property without giving to the Central Transportation Company the use of the capital received in the meanwhile, and it follows, therefore, that the sum of money so received constituted a fund in the hands of the Pullman Company, for which allowance should be made in capital invested, and which would therefore ratably diminish the interest charge contained in the table. The depreciation on capital at six per cent. per annum is regarded by the master as excessive, because such a rate of interest would in sixteen years pay for the cars. The testimony shows that a Pullman car will last from sixteen to twenty-four years, and at the expiration of seventeen years is worth about forty per cent. of its original value. The average rate of depreciation charge should not exceed four per cent.

If the corrections suggested by the master should be deemed proper additional testimony is requisite. It would be idle to specu-

2004 late upon the result of such testimony when adduced. Until further testimony is presented the master cannot ascertain and report whether or not the amount- received as earnings during the pendency of the lease exceed or are less than the amount paid as rental.

Counsel for the Central Transportation Company have contended

that the earnings largely exceeded the rental, and whilst not abandoning their claim as to such excess, have stated their willingness to waive it rather than to be subjected to the delay incident to the production of additional proof. The master has, however, been unable to accept their estimate of earnings for reasons heretofore stated. They have also called his attention to various errors in the calculations submitted by the Pullman Company. They have not, however, at any time made a call on the Pullman Company for the production of its books. The Pullman Company has failed, though requested by the master, to furnish him with such information as would, he believes, have enabled him to state an account. In so doing it has doubtless conformed to what its counsel have advised as the true interpretation of the order of reference, but the testimony furnished has not been sufficient to make it possible for the master to comply with the directions of the court as they are understood by him, and he accordingly is compelled to report that he has not as yet been furnished with sufficient data to enable him to ascertain the difference between the rentals paid to the Central Transportation Company from January 1st, 1870, to January 1st, 1885, and the receipts derived by the Pullman Company from its use of the property transferred during the period above referred to.

All of which is respectfully submitted.

THEODORE M. ETTING, *Master.*

2005 In the Circuit Court of the United States for the Eastern District of Pennsylvania. In Equity.

PULLMAN PALACE CAR COMPANY *vs.* CENTRAL TRANSPORTATION COMPANY. } No. 44. October Sessions, 1886.

CENTRAL TRANSPORTATION COMPANY *vs.* PULLMAN PALACE CAR COMPANY. } Cross-bill.

Report of Theodore M. Etting, Esq., Master.

Filed September 3rd, 1895.

2006 In the Circuit Court of the United States for the Eastern District of Pennsylvania.

PULLMAN'S PALACE CAR COMPANY *vs.* CENTRAL TRANSPORTATION COMPANY. } October Sessions, 1886. No. 44.

CENTRAL TRANSPORTATION COMPANY *vs.* PULLMAN'S PALACE CAR COMPANY. } Cross-bill.

Surreport of master.

Exceptions on Behalf of Central Transportation Company.

1st. The master erred in not reporting that the value of the Central Transportation Company's property at the time of the lease was three million dollars.

2nd. The master erred in not reporting a decree against Pullman's Palace Car Company for the sum found by him to be the value of the property of the Central Transportation —, viz., two million five hundred and fifty-five thousand dollars, with interest from January 1st, 1885.

3rd. The master erred in not reporting that as Pullman's Palace Car Company had failed to comply with the request of the master to furnish him the information required to ascertain the
2007 earnings of the Central Transportation Company's property in its hands, it is not entitled to further delay in the entering of a decree against it for the value of the property.

4th. The master erred in not reporting that the burden of proof was on Pullman's Palace Car Company to show that the rental paid by it was in excess of earnings, and that its failure to produce testimony to that effect entitled the Central Transportation Company to a decree for the value of the property without any deduction or set-off for any possible excess of rental over earnings, especially in view of the fact that the testimony taken raised a strong presumption that the earnings were in excess of the rental.

5th. The master erred in not reporting that the presumption arising from the refusal by Pullman's Palace Car Company to furnish the evidence of the earnings of the property in its hands is that the earnings exceeded the rental, and in not also reporting that Pullman's Palace Car Company cannot, after such refusal, claim any deduction from or delay in the payment of the value of the property on account of any possible excess of rental over earnings not shown by the evidence.

2008 6th. The master erred in not reporting that when after the expiration of the Central Transportation contracts with the respective roads, but before the repudiation of the lease, the Pullman's Palace Car Company continued to operate such roads either under the terms of the original contracts or under renewal or substituted contracts, it was bound to set off against the credit claimed for the rental paid to the Central Transportation Company after the expiration of such contracts the earnings derived from the operation of such roads during the same period.

7th. The master erred in reporting that the Central Transportation Company did not at any time ask for the production of the books of Pullman's Palace Car Company without also reporting that the Central Transportation Company requested the master to ask Pullman's Palace Car Company for an account of earnings, and that upon such request being made by the master the Pullman's Palace Car Company refused to comply with it.

FRANK P. PRICHARD,
JOHN G. JOHNSON,
For Central Trans. Co.

Endorsed: 44. Oct. sess., 1886. U. S. C. C. In equity. Pullman's Palace Car Co. *vs.* Central Trans. Co.; Central Trans. Co. *vs.* Pullman's Palace Car Co. Exceptions to report of Theodore M. Etting, master. Prichard, Johnson. Filed Oct. 2, 1895.

2009 PULLMAN'S PALACE CAR COMPANY *vs.* CENTRAL TRANSPORTATION COMPANY. } Original Bill.

CENTRAL TRANSPORTATION COMPANY *vs.* PULLMAN'S PALACE CAR COMPANY. } Cross-bill. No. 44. October Sessions, 1886.

Additional Exception of Pullman's Palace Car Company to Master's Report.

The cross-defendant further excepts to the master's report:

(33.) For that the said master has in and by his said report found as a fact that "the Pullman Company has failed, though requested by the master, to furnish him with such information as would, he believes, have enabled him to state an account."

A. H. WINTERSTEEN,
Solicitor and of Counsel for Pullman's Palace Car Company.

EDWARD S. ISHAM,
ROBERT T. LINCOLN,
Of Counsel.

Endorsed: No. 44. Oct. sess., 1886. C. C. U. S. Pullman's Palace Car Co. *v.* Central Transportation Co.; Central Transportation Co. *v.* Pullman's Palace Car Co. Additional exception of cross-defendant to master's report. Wintersteen, Isham, Lincoln. Filed Oct. 15, 1895. Samuel Bell, clerk.

2010 In the Circuit Court of the United States for the Eastern District of Pennsylvania. In Equity.

PULLMAN'S PALACE CAR COMPANY *vs.* CENTRAL TRANSPORTATION COMPANY. } Original Bill. No. 44. October Sessions, 1886.

CENTRAL TRANSPORTATION COMPANY *vs.* PULLMAN'S PALACE CAR COMPANY. } Cross-bill.

Master's Supplemental Report.

Filed October 23, 1895.

SAMUEL BELL, *Clerk.*

2011 In the Circuit Court of the United States for the Eastern District of Pennsylvania. In Equity.

PULLMAN'S PALACE CAR COMPANY
vs.
CENTRAL TRANSPORTATION COMPANY. } Original Bill.

CENTRAL TRANSPORTATION COMPANY
vs.
PULLMAN'S PALACE CAR COMPANY. } Cross-bill.

Master's Supplemental Report.

Exceptions have been filed with the master on behalf of both plaintiff and defendant, and the same are hereto appended.

1. The master has carefully considered each of the foregoing exceptions, and has reconsidered his report in the light of the exceptions, but after a patient and careful examination of the case he is compelled, subject to the corrections hereinafter made, to adhere to the conclusions stated in his report, and he therefore submits the exceptions to the judgment of the court.

2. In the draft of the report, as originally presented, through a clerical error occurring at the foot of page 75, the Bellefontaine and Terre Haute and Indiana railroads are included in the enumeration of roads on which earnings, in the judgment of the master, should be given until January 1st, 1885. By reference to pages 17 and 18 of the report, it appears that by the finding of the master the
2012 Bellefontaine contract expired on May 30th, 1880, and the Terre Haute contract on September 1st, 1878. It follows, therefore, that the exceptions of the Pullman Company, Nos. 19 and 24, are well taken, and that the report as presented should be corrected by striking out the above-mentioned railroads from the roads "on which earnings should be given until January 1st, 1885," and by substituting therefor the finding that the earnings of the above roads should be allowed until the expiration dates of their respective contracts, as above set forth.

3. The master desires to correct the following error in his original report, to which his attention has been directed since the filing of said report. On page 68, on the fourteenth line from the bottom of said page, the word "above" should be stricken out and the word below substituted.

All of which is respectfully submitted.

THEODORE M. ETTING, *Master.*

In the Circuit Court of the United States for the Eastern District of Pennsylvania.

PULLMAN'S PALACE CAR COMPANY *vs.* CENTRAL TRANSPORTATION COMPANY. } October Sessions, 1886. No. 44.

CENTRAL TRANSPORTATION COMPANY *vs.* PULLMAN'S PALACE CAR COMPANY. } Cross-bill.

Surreport of master.

Exceptions on Behalf of Central Transportation Company.

First. The master erred in not reporting that the value of the Central Transportation Company's property, at the time of the lease, was $3,000,000.

2013 Second. The master erred in not reporting a decree against Pullman's Palace Car Company for the sum found by him to be the value of the property of the Central Transportation, viz., $2,555,000, with interest from January 1st, 1885.

Third. The master erred in not reporting that as Pullman's Palace Car Company had failed to comply with the request of the master to furnish him the information required to ascertain the earnings of the Central Transportation Company's property in its hands, it is not entitled to further delay in the entering of a decree against it for the value of the property.

Fourth. The master erred in not reporting that the burden of proof was on Pullman's Palace Car Company to show that the rental paid by it was in excess of earnings, and that its failure to produce testimony to that effect entitled the Central Transportation Company to a decree for the value of the property, without any deduction or set-off for any possible excess of rental over earnings, especially in view of the fact that the testimony taken raised a strong presumption that the earnings were in excess of the rental.

Fifth. The master erred in not reporting that the presumption arising from the refusal by Pullman's Palace Car Company to furnish the evidence of the earnings of the property in its hands is that the earnings exceeded the rental; and in not also reporting that Pullman's Palace Car Company cannot, after such refusal, claim any deduction from or delay in the payment of the value of the property on account of any possible excess of rental over earnings not shown by the evidence.

Sixth. The master erred in not reporting that when after the expiration of the Central Transportation contracts with the respective roads, but before the repudiation of the lease, the Pullman's Palace Car Company continued to operate such roads either under the terms of the original contracts, or under renewal or substi-

2014 tuted contracts, it was bound to set off against the credit claimed for the rental paid to the Central Transportation

Company, after the expiration of such contracts, the earnings derived from the operation of such roads during the same period.

Seventh. The master erred in reporting that the Central Transportation Company did not at any time ask for the production of the books of Pullman's Palace Car Company, without also reporting that the Central Transportation Company requested the master to ask Pullman's Palace Car Company for an account of earnings, and that upon such request being made by the master, the Pullman's Palace Car Company refused to comply with it.

FRANK P. PRICHARD,
JOHN G. JOHNSON,
For Central Transportation Company.

2015 In the Circuit Court of the United States for the Eastern District of Pennsylvania. In Equity.

PULLMAN'S PALACE CAR COMPANY
vs.
CENTRAL TRANSPORTATION COMPANY. } Original Bill.

CENTRAL TRANSPORTATION COMPANY
vs.
PULLMAN'S PALACE CAR COMPANY. } Cross-bill.

Exceptions taken by the said Pullman's Palace Car Company, complainant in the original bill and defendant in the cross-bill in the above cause, to the report of Theodore M. Etting, Esq., master, to whom it was referred to report the value of the property of the said Central Transportation Company, defendant in the original bill and complainant in the cross-bill in said cause, when received by said Pullman's Palace Car Company, together with its earnings since, less the amount paid as rent.

The said Pullman's Palace Car Company, cross-defendant, in taking its exceptions hereinafter set forth, protests and claims as follows, namely:

That the cross-complainant, The Central Transportation Company, is not entitled to any recovery in this cause.

That if said cross-complainant is entitled to be credited in any account taken in this cause with a capital sum for the value of its property transferred to said cross-defendant in the year 1870, it is not entitled to a credit for the earnings of such property.

2016 That if said cross-complainant is entitled to be credited in any account taken in this cause with a capital sum for the value of its property transferred to said cross-defendant in the year 1870, it is not entitled to a credit for the value of any property other than the tangible property so transferred.

That as to any claim of said cross-complainant for the return of property or for a credit in an account in this cause for the money value thereof, the said cross-defendant is entitled — the benefit and protection of the statute of limitations.

The said cross-defendant always reserving to itself all benefit and

advantage of the foregoing protests and claims thereupon takes exceptions to the said master's report as follows, namely:

(1.) For that the said master has in and by his said report certified and reported that the original cost of the entire outfit of cars and equipment of the Central Transportation Company was $950,000, whereas the master ought to have certified and reported that such original cost did not exceed the sum of $900,000 and should have deducted a depreciation of at least thirty per cent. from said sum in estimating the actual value of said cars and equipment.

(2.) For that the said master has in and by his said report certified and reported that the value of the patents was $266,000, whereas the master ought to have certified and reported that they were of no value.

(3.) For that the said master has in and by his said report certified and reported a valuation of the equipments of cars as a separate sum to be accounted for by Pullman's Palace Car
2017 Company, whereas the master ought to have certified and reported that such equipments should not be so valued, for the reason that they were exhausted in the process of making earnings.

(4.) For that the said master has in and by his said report certified and reported a valuation of the property of the Central Transportation Company by appraising the plant as a going concern without appraising or making separately a valuation of each form of property considered by him to be a part of such plant.

(5.) For that the said master has in and by his said report certified and reported a valuation for the property of the Central Transportation Company identical with the market value in the year 1870 of the whole of the shares of the capital stock of the said company, whereas the master ought to have certified and reported that the value of said property included only the value of its cars and the sum of $17,000 paid by it to the said cross-defendant.

(6.) For that the said master has in and by his said report in certifying and reporting the valuation of the property of the Central Transportation Company when received by Pullman's Palace Car Company as appraised by him, in fact, included in and made part of said valuation and appraisal an illegal and improper element, namely, the value of the supposed mutual obligations and the acts of Pullman's Palace Car Company and the Central Transportation Company under the contract of the year 1870 between the said companies thereafter adjudged to be illegal and void.

(7.) For that the said master has in and by his said report in certifying and reporting the valuation of the property of the Central Transportation Company when received by Pullman's Palace
2018 Car Company as appraised by him, failed to exclude from said valuation and appraisal an illegal and improper element, namely, the value of the supposed mutual obligations and the acts of Pullman's Palace Car Company and the Central Transportation Company under the contract of the year 1870 between the said companies thereafter adjudged to be illegal and void.

(8.) For that the said master has in and by his said report, certified

and reported a degree and extent of liability of Pullman's Palace Car Company to the Central Transportation Company, which is equivalent to a finding by the master that Pullman's Palace Car Company is subject under the illegal and void contract between the two companies to the liabilities and responsibilities of a trustee.

(9.) For that the said master has in and by his said report certified and reported a liability of Pullman's Palace Car Company for earnings to a degree and extent which is equivalent to a finding by said master that Pullman's Palace Car Company is subject to a liability to account for earnings as a trustee, whereas the said master should have certified and reported that Pullman's Palace Car Company is not subject to such a liability, because it was at all times the right and legal duty of the Central Transportation Company to demand and recover its property and resume the performance of its duties.

(10.) For that said master has in and by his said report certified and reported a degree and extent of liability of Pullman's Palace Car Company for property of the Central Transportation Company based upon earnings of said property as though Pullman's Palace Car Company were acting in a fiduciary capacity, whereas the said master should have found that it did not act in a fiduciary
2019 capacity, because it was at all times the right and duty of the Central Transportation Company to demand and recover its property and resume the performance of its duties.

(11.) For that the said master has in and by his said report certified and reported that the contract made in the year 1870 between Pullman's Palace Car Company and the Pennsylvania Railroad Company, was, and was accepted by all parties in interest, as a substitute for the contracts covering the railways described as included in the Pennsylvania system, illegally assigned by the Central Transportation Company.

(12.) For that the said master has in and by his said report certified and reported that as a matter of law the contract of the cross-complainant, The Central Transportation Company, with the Pennsylvania Railroad Company, entitled or made it obligatory upon the Central Transportation Company to operate sleeping cars between any points, though not on the line of the Pennsylvania railroad, which the Pennsylvania Railroad Company might desire.

(13.) For that the said master has in and by his said report certified and reported that Pullman's Palace Car Company should account for the earnings made by it between the 1st day of January, 1870, and the 2d day of December, 1877, on the railway called in his said report "the United Railroads of New Jersey."

(14.) For that the said master has in and by his said report certified and reported that Pullman's Palace Car Company should account for earnings made by it between the 1st day of January, 1870, and the 2d day of December, 1877, on the railway called in his said report the Philadelphia and Erie railroad.

2020 (15.) For that the said master has in and by his said report certified and reported that Pullman's Palace Car Company should account for the earnings made by it between the 1st day of January, 1870, and the 2d day of December, 1877, on the railway

called in his report the Pittsburg, Cincinnati and St. Louis railroad.

(16.) For that the said master has in and by his said report certified and reported that Pullman's Palace Car Company should account for the earnings made by it between the 1st day of January, 1870, and the 2d day of December, 1877, on the railway called in his said report the "Little Miami railroad."

(17.) For that the said master has in and by his said report certified and reported that as a matter of law the act of the legislature of the State of Pennsylvania, approved February 9, 1870, extending the charter of the Central Transportation Company for ninety-nine years from December 30, 1882, had the legal effect of extending the mutual contract obligations of the Central Transportation Company and railways which had previously and during the period when the corporate life of the Central Transportation Company was by law limited to a period of twenty years, expiring on the said 30th day of December, 1882, made contracts expressed to be binding reciprocally during the continuance of the incorporation of the Central Transportation Company, so that such contracts were extended and made to be binding upon the parties thereto after the expiration of the said period of twenty years expiring on the said 30th day of December, 1882.

(18.) For that the said master has in and by his said report certified and reported that Pullman's Palace Car Company should
2021 account for earnings made by it after the 30th day of December, 1882, on the Cincinnati, Hamilton and Dayton and Dayton and Michigan railroads.

(19.) For that the said master has in and by his said report certified and reported that Pullman's Palace Car Company should account for earnings made by it after the 30th day of December, 1882, on the Bellefontaine railroad.

(20.) For that the said master has in and by his said report certified and reported that Pullman's Palace Car Company should account for earnings made by it after the 30th day of December, 1882, on the Marietta and Cincinnati railroad.

(21.) For that the said master has in and by his said report certified and reported that Pullman's Palace Car Company should account for earnings made by it after the 30th day of December, 1882, on the Central Ohio railroad.

(22.) For that the said master has in and by his said report certified and reported that Pullman's Palace Car Company should account for earnings made by it after the 30th day of December, 1882, on the Indianapolis and Cincinnati railroad.

(23.) For that the said master has in and by his said report certified and reported that Pullman's Palace Car Company should account for earnings made by it after the 30th day of December, 1882, on the Cincinnati, Columbus, Chicago and Indiana Central railroad.

(24.) For that the said master has in and by his said report certified and reported that Pullman's Palace Car Company should

account for earnings made by it after the 30th day of December, 1882, on the Terre Haute and Indianapolis railroad.

2022 (25.) For that the said master has in and by his said report certified and reported that Pullman's Palace Car Company should account for earnings made by it after the 30th day of December, 1882, on the Vandalia and Terre Haute railroad.

(26.) For that the said master has in and by his said report certified and reported that Pullman's Palace Car Company should account for earnings made by it after the 30th day of December, 1882, on the Jeffersonville, Madison and Indianapolis railroad.

(27.) For that the said master has in and by his said report certified and reported that Pullman's Palace Car Company should account for earnings made by it after the 30th day of December, 1882, on the Louisville, Cincinnati and Lexington railroad.

(28.) For that the said master has in and by his said report certified and reported that the net earnings of the Central Transportation Company cars made after January 1, 1870, and shown in evidence, namely, the sum of $1,259,146.41, are not the earnings required to be ascertained under the order of the court.

(29.) For that the said master has in and by his said report certified and reported that the average rate of depreciation on Pullman cars should not exceed four per centum per annum, whereas the master ought to have certified and reported that the average rate of depreciation on Pullman cars is six per centum per annum.

(30.) For that the said master has in and by his said report certified and reported that at the time of the execution of the lease between Pullman's Palace Car Company and the Central

2023 Transportation Company, the following railroads, namely, the Philadelphia and Erie, the Pittsburg, Cincinnati and St. Louis, and the Little Miami, Columbus and Xenia, hereinbefore called the Little Miami railroad, were leased or controlled by the Pennsylvania railroad.

(31.) For that the said master has in and by his said report certified and reported as expressly stated in his report upon presumption and in the absence of any testimony that sleeping cars were operated upon the said railroads mentioned in exception above numbered thirty (30), in pursuance of a demand of the Pennsylvania railroad supported by an obligation of the Central Transportation Company to the Pennsylvania railroad to comply with such demand.

(32.) For that the said master has in and by his said report certified and reported that at the time of the execution of the lease between the Central Transportation Company and Pullman's Palace Car Company, the Central Transportation Company had a contract with what is called in said report the "New York and Washington through line," whereas the master ought to have certified and reported that said New York and Washington through line was made up of parts of separate railway lines, several of which, namely, the railways afterwards called the United Railways of New Jersey, covered the territory between New York and Philadelphia, and that with the railway or railways covering that part of said New York

and Washington through line last mentioned, there was no contract with the Central Transportation Company.

In all of which particulars the report of the said master is,
2024 as the said cross-defendant, Pullman's Palace Car Company is advised, erroneous, and the said cross-defendant appeals therefrom to the judgment of this honorable court.

A. H. WINTERSTEEN,
Solicitor and of Counsel for Pullman's Palace Car Company, Cross-defendant.

EDWARD S. ISHAM,
ROBERT T. LINCOLN,
Of Counsel.

2025 PULLMAN'S PALACE CAR COMPANY *vs.* CENTRAL TRANSPORTATION COMPANY. } Original Bill.

CENTRAL TRANSPORTATION COMPANY *vs.* PULLMAN'S PALACE CAR COMPANY. } Cross-bill.

October Sessions, 1886. No. 44.

Additional Exception of Pullman's Palace Car Company to Master's Report.

The cross-defendant further excepts to the master's report:

(33.) For that the said master has in and by his said report found as a fact that "the Pullman Company has failed, though requested by the master, to furnish him with such information as would, he believes, have enabled him to state an account."

A. H. WINTERSTEEN,
Solicitor and of Counsel for Pullman's Palace Car Company.

EDWARD S. ISHAM,
ROBERT T. LINCOLN,
Of Counsel.

2026 And afterwards, to wit, on the 23rd day of December, A. D. 1895, come the parties aforesaid, by their counsel aforesaid, and this case being called for argument before Hon. George M. Dallas, circuit judge, and Hon. William Butler, district judge, on exceptions to master's report, and having been argued by counsel for the respective parties, and the court, not being fully advised in the premises, takes further time for the consideration thereof.

And afterwards, to wit, on the 13th day of January, A. D. 1896, come the parties aforesaid, by their counsel aforesaid, and the court, now being fully advised in the premises, renders the following opinion, to wit:

2027 Circuit Court of the United States, Eastern District of Pennsylvania, October Session, 1886.

CENTRAL TRANSPORTATION COMPANY
vs.
PULLMAN'S PALACE CAR COMPANY. } No. 44.

BUTLER, *J.:*

The master was appointed in pursuance of the opinion filed December 18th, 1894, to ascertain the value of the property transferred and the amount of its earnings. He has found the value to be $2,552,000, and reports that no estimate of earnings can be made from the data furnished; that "the Pullman Company failed to produce (though requested to do so) evidence in its possession which he believes would have enabled him to state an account." Although both parties filed exceptions, the transportation company now seeks a decree for the $2,552,000, with interest from January 1st, 1885, when payment of rent ceased, waiving its claim to earnings to avoid (as it asserts) further delay in obtaining a settlement. The Pullman Company stands on its exceptions, claiming in substance, first, that it is not accountable for the intangible property—such as contracts with railroads, patent rights, &c.; second, that the valuation is too high, and, third, that the rents paid more than compensate for all the property received.

2028 The matter embraced in the first exception is covered by the opinion under which the master was appointed. It is not too late, however, to revive the question and continue the discussion; but we do not desire to add materially to what has been said. The argument drawn from the invalidity of the lease—that this instrument did not transfer this description of property—seems to be fallacious. The lease did not transfer any description of property. It was ineffectual for every purpose. The acts of the parties, however, transferred the property, the intangible as fully and effectually as all other. The counsel say, "No railway contracts valid and obligatory in favor of the Pullman Company upon the railways during the original or the extended life of the Central Company or during the continuance of any patent rights original or extended, or for any other period whatever, were ever received by the Pullman Company. The Central Company had definite contract rights for fixed and long periods of time and enforcible against the railway companies. The Pullman Company did not acquire those and the Central Company did not 'part with' them. The Pullman Company got nothing enforcible upon the railways, either specially or by damages. It acquired at best but a precarious status,
2029 terminable and destructible at any moment by the Central Company itself or by the State. The attempted assignments passed no title and no legal rights whatever."

This view was presented with force and earnestness. But the obvious answer is that the Pullman Company got the use and benefit of these contracts as completely as it did that of all other property named in the lease, operated its cars under them in some instances

in others surrendered them and obtained new contracts in pursuance of the rights which they secured, and thus acquired complete possession of the transportation company's business, which it still holds and enjoys. It is of no consequence that the railroad companies might have refused recognition of the Pullman Company; they did not. Like the parties to the lease, they believed it to be valid, treated the Pullman Company as lawful owner of the contracts and accorded to it all the rights they secured. To say that the transportation company might immediately have resumed possession of the contracts and continued the prosecution of its business, signifies nothing material to the circumstances. The same might as justly be said respecting the cars and other tangible property. It is not true, however, that the possession might have been so resumed.
2030 The Pullman Company would not have allowed it; and although the lease might have eventually been declared void, the property and business would have been absorbed in the meantime. Both parties firmly believed the lease to be valid; they were so instructed by eminent counsel, and were therefore justified in the belief. It was not until after the lapse of many years, when the property was irretrievably lost to the transportation company, that it had cause to doubt the validity of the lease. It must not, therefore, be visited with knowledge of the invalidity, and the consequences of such knowledge, until the Pullman Company changed its position and raised the question. To hold otherwise would work manifest injustice by allowing the latter company, after standing on the lease until it had absorbed the property and business, to turn about and say, We had no right to it; you should not have permitted us to take it, and you therefore have no right to complain.

As respects the second exception, we think the valuation is not unjust to the Pullman Company. The assertion that it includes the value of the transportation company's franchise is not well founded. It is true that the property is valued at its worth
2031 to the latter company, in view of the right to use it as the company did. This right the Pullman Company could exercise by virtue of its franchise, and did not therefore need the transportation company's. The value of the property to the transportation company and to the Pullman Company was therefore what the former lost and the latter gained by the transfer. If the latter's gain was less than the former's loss, this might be, possibly, the proper measure of compensation. There is no evidence, however, that it was less; the indications are that it was not. If it was less, the Pullman Company could have shown it. The transportation company's franchise was simply rendered valueless by the transfer of its property. Its business was thus lost and its power to establish another destroyed.

As respects the third exception, we think the inference that the earnings were equal to the rent paid is reasonable, if not unavoidable. If they were not, the Pullman Company, having possession of the evidence, should have shown it. The testimony produced by the transportation company was quite sufficient to put the burden

on the other side. The failure to respond to the master's re-
2032 quest greatly strengthens the inference. It is urged, how-
ever, that if the Pullman Company is charged with the property as of 1870, it must be treated thereafter as entitled to the earnings and be credited with the amount subsequently paid as rent. Of course if it is treated as owner from that date, it could not justly be held accountable for earnings thereafter and would be liable only for the value, with interest from that date, subject to the credit stated. But it is not so treated and cannot be, because it would not correspond with the facts and would be unjust. The ownership of the property remained in the transportation company, the Pullman Company taking possession and holding it for the former, paying a stipulated price for its use up to 1885. The lease under which the parties acted was void, but this did not render the acts void. They chose to and did treat it as valid, and to the extent that its provisions were executed the court will not interfere, except to prevent manifest injustice. Up to 1885 they were executed; the Pullman Company got and enjoyed the use and paid the stipulated price. Inasmuch, however, as the enjoyment of the use was granted and the rent was paid therefor in contemplation of a longer continuance of the arrangement, it was supposed that the
rent might fall short of a just compensation for the use
2033 or be in excess of such compensation. This was, therefore, considered a proper subject of inquiry. It is plain, however, that the parties substantially intended that the use and the rent should balance each other, and in the absence of proof to the contrary it should be presumed they did. It was not, therefore, until 1885, when the Pullman Company ceased to pay rent and repudiated the arrangement, that it became practically responsible for a return of the property or the payment of its value. Of course it may be said that such responsibility actually existed from the beginning, because the arrangement was unlawful. The parties, however, did not so understand and treated it as lawful, and to the extent of what they thus did in good faith their acts will not be disturbed. It is too late now to treat the responsibility as existing in 1870 and make settlement accordingly. It would not only be in conflict with the facts, but would work manifest and very great injustice. It would enable the Pullman Company to set up the statute of limitations, as it did before the master, and if this failed, than to take the property for less than it agreed to pay and did pay (interest
considered) substantially as compensation for fifteen years of
2034 its use. It is the value of the property at the time it should have been returned that the Pullman Company should be charged with. Inasmuch as this value would be difficult of ascertainment by the transportation company except by reference to the value in 1870, it was considered proper to direct the inquiry to the latter date. Presumably the value increased; the evidence fully justifies the presumption. If it decreased, the Pullman Company could and should have shown it. The master's valuation in 1870 is therefore to be taken as the value in 1885, when the property should have been returned. The payment of this sum, with inter-

est from January 1st, 1885, seems necessary to a just settlement, treating the value of the use and the rents paid prior to that date as balancing each other. A decree may be prepared accordingly, dismissing the exceptions and confirming the report.

DALLAS, *Cir. Judge:*

I concur in the foregoing opinion and deem it unnecessary to further extend the discussion of the questions with which it deals, but may add that the result arrived at by the master seems to me to be quite as favorable to the Pullman Company as, upon any possible view of the facts and the law, could reasonably have been reached.

Endorsed: 44. Oct. sess., 1886. C. C. U. S., E. D. of Pa. Pullman Pallace Car Co. *vs.* Central Transportation Co.; Central Transportation Co. *vs.* Pullman Palace Car Co. Opinion by Butler, J., Dallas, C. J., concurring, ordering decree to be prepared dismissing exceptions and confirming master's report. Filed Jan. 13, 1896. Samuel Bell, clerk.

2035 U. S. C. C., E. D. of Pa., October Sess., 1886.

PULLMAN'S PALACE CAR COMPANY *vs.* CENTRAL TRANSPORTATION COMPANY. } No. 44.

CENTRAL TRANSPORTATION COMPANY *vs.* PULLMAN'S PALACE CAR COMPANY. } Cross bill.

And now, January 24th, 1896, the above cause having been heard upon exceptions to the report of Theodore M. Etting, Esq., master, and having been argued by counsel for the respective parties and considered by the court, it is ordered and decreed in conformity with the opinions of the court filed—

First. That both the exceptions filed by the Central Transportation Company and the exceptions filed by Pullman's Palace Car Company to the master's report be dismissed.

Second. That Pullman's Palace Car Company pay to the Central Transportation Company the sum of four million two hundred and thirty-five thousand and forty-four dollars.

Third. That Pullman's Palace Car Company pay the costs of this cause incurred on account of the cross-bill.

Endorsed: 44. Oct. sess., 1886. U. S. C. C., E. D. of Pa. Pullman's Palace Car Co. *vs.* Central Trans. Co.; Central Trans. Co. *vs.* Pullman's Palace Car Co. Decree. Filed Jan. 24, 1896. Samuel Bell, clerk.

2036 C. C. U. S., E. D. of Penna., October Sessions, 188 .

PULLMAN'S PALACE CAR COMPANY
vs.
CENTRAL TRANSPORTATION COMPANY. } No. 44.

CENTRAL TRANSPORTATION COMPANY
vs.
PULLMAN'S PALACE CAR COMPANY. } Cross-bill.

The Pullman's Palace Car Company conceiving itself aggrieved by the decree entered in these causes as of January 24, 1896, which said final decree is in the words and figures as follows:

And now, January 21st, 1896, the above cause having been heard upon exceptions to the report of Theodore M. Etting, Esq., master, and having been argued by counsel for the respective parties and considered by the court, it is ordered and decreed in conformity with the opinions of the court filed—

First. That both the exceptions filed by the Central Transportation Company and the exceptions filed by Pullman's Palace Car Company to the master's report be dismissed.

Second. That Pullman's Palace Car Company pay to the
2037 Central Transportation Company the sum of four million two hundred and thirty-five thousand and forty-four dollars.

Third. That Pullman's Palace Car Company pay the costs of this cause incurred on account of the cross-bill.

and by other decrees and conclusions of the court in the above-entitled causes, hereby prays an appeal therefrom to the Supreme Court of the United States under and by virtue of the provisions of section 5 of the act of Congress of March 3, 1891, wherein it is provided that appeals may be taken from the existing circuit courts direct to the Supreme Court in any case that involves the construction or application of the Constitution of the United States or in any case in which the constitution or law of a State is claimed to be in contravention of the Constitution of the United States.

And it prays that this appeal may be allowed, and that a
2038 transcript of the record and proceedings and papers upon which said decrees and conclusions were made, duly authenticated, may be sent to the Supreme Court of the United States.

A. H. WINTERSTEEN,
ROBERT T. LINCOLN,
EDW'D S. ISHAM,
Attorneys for Pullman's Palace Car Company.

Endorsed: No. 44. Oct. sess., 1886. U. S. C. C., E. D. of Penna. Pullman's Palace Car Co. *v.* Central Transportation Co.; Central Transportation Co. *v.* Pullman's Palace Car Co. Petition of Pullman's Palace Car Co. for appeal to Supreme Court of United States. Wintersteen, Lincoln, Isham. Filed Jan. 24, 1896. Samuel Bell, clerk.

2039 And afterwards, to wit, on the 24th day of January, A. D. 1896, come the parties aforesaid, by their counsel aforesaid, and this cause being argued before Hon. George M. Dallas, circuit judge, and Hon. William Butler, district judge, on petition of the Pullman's Palace Car Company for allowance of appeal direct to the Supreme Court of the United States, and having been argued by counsel for respective parties, and the court, not being fully advised in the premises, takes further time for the consideration thereof.

And afterwards, to wit, on the 28th day of January, A. D. 1896, come the parties aforesaid, by their counsel aforesaid, and the court, now being fully advised in the premises, renders the following opinion, to wit:

2040 Circuit Court of the United States, Eastern District of Pennsylvania, Oct. Sess., 1886. No. 44.

PULLMAN'S PALACE CAR COMPANY *vs.* CENTRAL TRANSPORTATION COMPANY. } No. 44. Oct. Sess., 1886.

CENTRAL TRANSPORTATION COMPANY *vs.* PULLMAN'S PALACE CAR COMPANY. } Cross-bill. No. 44. Oct. Sess., 1886.

DALLAS, *Cir. Judge:*

The Pullman Palace Car Company has presented a petition for the allowance by this court of an appeal direct to the Supreme Court. The counsel of the petitioner insist that it is entitled to take such appeal under section 5 of the act to establish circuit courts of appeals, &c., approved March 3, 1891, because, as is claimed on its behalf, the case is one "that involves the construction or application of the Constitution of the United States." The counsel of the Central Transportation Company denies that any such question is involved, but admits that the alleged right of appeal, if such question existed, would be absolute and not dependent upon the assent of this court. This view of the law is, in our opinion, correct. The act gives a right of appeal direct to the Supreme Court in certain enumerated cases. It does not confer upon the circuit court authority to allow or to disallow such appeals or to adjudge whether
2041 any particular case is one in which such appeal lies. We are aware that the practice has to some extent prevailed of obtaining the allocatur of the circuit court before taking the appeal, but there is nothing in the statute which requires it, and where, as here, the application is resisted we think it should not be given. In our opinion, the appeal, if warranted by the statute, is of right, and whether or not it is in fact so warranted is not for this court but for the Supreme Court to determine. Upon this ground alone a special allocatur is denied.

Butler, D. J., concurs.

Endorsed: No. 44. Oct. sess., 1886. C. C. U. S., E. D. of Pa. Pullman's Palace Car Co. *vs.* Central Transportation Co.; Central Transportation Co. *vs.* Pullman's Palace Car Co. Opinion by Dallas, J., Butler, D. J., concurring, denying special allocatur surpetition of Pullman's Palace Car Co. for an appeal direct to the Supreme Court of the U. S. Filed Jan. 28, 1896. Samuel Bell, clerk.

2042 C. C. U. S., E. D. of Pa., October Sessions, 1886.

PULLMAN'S PALACE CAR CO. *vs.* CENTRAL TRANSPORTATION CO. } No. 44.

CENTRAL TRANSPORTATION CO. *vs.* PULLMAN'S PALACE CAR CO. } Cross-bill.

Assignment of Errors.

1. The court erred in denying the motion of the complainant in the original bill to dismiss the said bill.

2. The court erred in refusing to dismiss the original bill on the motion of the complainant therein.

3. The court erred in allowing the motion of defendant in the original bill for a leave to file the cross-bill in this cause.

4. The court erred in permitting the defendant in the original bill to file the cross-bill which was filed in this cause.

5. The court erred in overruling the demurrers of the complainant in the original bill which were filed to said cross-bill by said complainant.

6. The court erred in taking cognizance as a court of equity of the subject-matter of said cross-bill.

2043 7. The court erred in holding that the subject-matter of the said cross-bill being matter of a purely legal nature and of the enforcement of a purely legal right was not excluded from the cognizance of equity by the force of the seventh amendment to the Constitution of the United States.

8. The court erred in not holding that the subject-matter of said cross-bill was the proper subject-matter of action at law only and of trial at law and by jury, both under the provisions of the seventh amendment of the Constitution of the United States and of section 723 of the Revised Statutes of the United States.

9. The court erred in rendering the opinion and in entering the order which was entered on the 18th day of December, 1894, in which the said cause was referred to the master in chancery and in the directions to said master and the other provisions contained in said order.

10. The court erred in holding in said order that under the circumstances stated in said cross-bill the complainant therein

2044 was entitled either to any decree for the restoration of property delivered to the cross-defendant in performance of the

terms and for the purposes of the contract of lease dated the 17th day of February, 1870, and mentioned in said cross-bill, and which is stated therein to have been illegal and void by the Supreme Court of the United States, or any affirmative intervention of the court whatever on behalf of said cross-complainant.

11. The court erred in holding that any property was ever transferred to or was ever received by The Pullman Company, the cross-defendant, under the void lease of 1870 aforesaid, except such corporeal and tangible property as was susceptible of physical and manual delivery and of an actual change of possession, even though such transfer and change of possession might be unauthorized or in violation of law.

12. The court erred in holding that the contracts of the Central Transportation Company with various railway companies mentioned in the pleadings in the original and cross cause and
2045 the patent rights also mentioned therein and in the said opinion and order of the said court entered on the said 18th day of December, 1894, and in the said contract of lease constituted "property" which was transferred to and received by said cross-defendant under said void lease, and in holding that said cross-defendant in bound to restore or pay the value of said contracts and patents.

13. The court erred in holding that by force of any assignment or assignments under said lease or otherwise that there was ever any transfer by the cross-complainant to the cross-defendant of any incorporeal and intangible rights created by contract or otherwise, and in holding that any transfer of such incorporeal rights or property could occur except by or in accordance with the operation of law, and in holding that any transfer of such rights or property made by or for the purposes of the void lease was made effectual by operation of law so as to make the cross-defendant lawfully responsible therefore or holden to make compansation therefor.

14. The court erred in holding that a transfer of such incorporeal and intangible corporate rights could be made effectual by the act of the parties, although contrary to law, so as to enable the cross-defendant to be clothed with said rights and the power to
2046 exercise them and dispose of them and so as to make said cross-defendant lawfully chargeable therewith under said cross-bill and responsible therefor.

15. The court erred in holding that the contracts made subsequent to the making of said void lease and which were made between the said cross-defendant and the Pennsylvania Railroad Company or other railroad companies were made in exchange for or in substitution for the said railway contracts purporting to have been assigned to said cross-defendant by the cross complainant by or for the purposes of said void lease, so as to give rise to any rights of the Central Transportation Company therein, either by subrogation or derived in any other way through assignments made for the purposes of said void lease or by acts of the parties.

16. The court erred in holding that the Central Transportation Company transferred to the Pullman Company its property and

business, including all the incorporeal and intangible contracts, rights, and patents, as well as its cars and other tangible property, and that the Pullman Company "took possession of the property and the business transferred, consolidating it with its own," and that "the property and the business" of the Central Transportation Company were completely merged in the property and
2047 the business of the Pullman Company as the parties intended when executing the void lease, and that it had "become incorporated with the business and property of the" cross-defendant, and that compensation must therefore be made.

17. The court erred in holding that the measure of compensation to be made in such case was the value of the property, including therein the tangible and intangible property of the Central Transportation Company and its business at the time the same purported to have been transferred in pursuance of the void lease, together with its earnings since, less the amount paid as rent.

18. The court erred in holding that the said cross-defendant should pay to the said cross-complainant the value of said property when transferred, but did not thereby become the owner of the property so paid for; but that the same remained the property of the said cross-complainant, and that it remained entitled to the earnings made by the use of said property.

19. The court erred in rendering the opinion and judgments contained therein which it rendered and entered on the 13th day of January, 1896.

20. The court erred in overruling each of the exceptions of
2048 the cross-defendant to the report filed in this cause by Theodore M. Etting, Esq., master in chancery, and in dismissing the same and each of them.

21. The court erred in confirming the report of the master filed and made in this court.

22. The court erred in holding that the cross-defendant had refused or neglected to furnish statements and produce in evidence before the master all the earnings called for by the order of reference to the master, and in holding that the cross-defendant had failed or refused to disclose any earnings called for by the master under the authority of and in pursuance of the order of reference.

23. The court erred in holding that the finding of the master was correct; that certain railway contracts belonging to the Central Transportation Company and which were originally made to continue "during the continuance of incorporation" of the Central Transportation Company were continued in force and extended for the period of 99 years by force of the act of the legislature of the State of Pennsylvania of the 9th of February, A. D. 1870, by which the said transportation company was given a corporate life for a period of 99 years from the time of the expiration of its then
2049 existing charter; and the court erred in not holding that such effect of the said legislative act of the 9th of February, 1870, was in conflict with and would be forbidden by article 1, section 10, of the Constitution of the United States, which prohibits on

the part of the States any enactment impairing the obligation of contracts.

24. The court erred in holding that the master was entitled to call under his order of reference upon the cross-defendant for statements of earnings made after the expiration according to their original terms of railway contracts made to continue during the incorporation of the Central Transportation Company.

25. The court erred in holding that the valuation of the property made by the master as of 1870 was a measure of the value of the said property so valued in 1885, and in holding that the value in 1885 was presumably greater of such property than in 1870.

26. The court erred in holding that the cross-complainant was entitled to recover the value of the property assumed to have been transferred in 1870 and the earnings of the property from that time until the lease was declared void by the cross-defendant, and then interest thereafter on the amount of said valuation.

2050 27. The court erred in holding that it would treat the said void contract of lease as executed "up to 1885," and that "to the extent its provisions were executed, the court will not interfere," and in confining the provisions so treated as executed to the reception of earnings on the one hand by the cross-defendant and of the reserved rental under the lease by the cross-complainant on the other, and in not holding that other matters were equally executed, and that during that period to 1885 all the assigned railway contracts had expired and no longer existed and had no value whatever, because they had been used up and exhausted in making the earnings to which the court holds the cross-complainant to be entitled.

28. The court erred in confirming the valuation made by the master of the property alleged to have been transferred to and received by the cross-defendant in 1870, because the said valuation was made by the master upon an unlawful and improper basis, namely, the market value of the shares of the capital stock of the Central Transportation Company, and equalled the value so ascertained of the entire capital stock of the said transportation

2051 company, whereas such valuation necessarily included elements of value to the transportation company which it could not assign and transfer, and also unlawful elements for which no consideration could lawfully be recovered.

29. The court erred in making and entering the final decree in this cause.

A. H. WINTERSTEEN,
ROB'T T. LINCOLN,
EDWARD S. ISHAM,
Attorneys for Pullman's Palace Car Co.

Endorsed: No. 44. Oct. sess., 1886. C. C. U. S. Pullman's Palace Car Co. *v.* Central Transportation Co. Central Transportation Co. *v.* Pullman's Palace Car Co. Cross-bill. Assignment of errors. Wintersteen, Lincoln, Isham. Filed Jan. 31, 1896. Samuel Bell, clerk.

2052 C. C. U. S., E. D. of Penna., October Sessions, 1886.

PULLMAN'S PALACE CAR CO. *vs.* CENTRAL TRANSPORTATION CO. } No. 44.

CENTRAL TRANSPORTATION CO. *vs.* PULLMAN'S PALACE CAR CO. } Cross-bill.

And now, January 31st, 1896, comes the Pullman's Palace Car Company, and, representing that it has filed with the clerk of the court below an assignment of errors pursuant to rule 35 of the Supreme Court of the United States, hereby appeals from the decree of this court entered on January 24th, 1896, and from all other decrees and orders heretofore entered in the above-entitled causes, to the Supreme Court of the United States, in exercise of the rights conferred in and by section 5th of the act of Congress approved March 3rd, 1871. It prays that its appeal may be allowed, and that a transcript of the record and proceedings and papers upon which said decrees and orders were made, duly authenticated, may be sent to the Supreme Court of the United States, and that said ap-
2053 peal may be made a supersedeas of execution in this case.

A. H. WINTERSTEEN,
J. S. RUNNELLS,
ROBERT T. LINCOLN,
EDW'D S. ISHAM,
Attorneys for Pullman's Palace Car Company.

And now, February 1st, 1896, it is ordered that the appeal be allowed as prayed for, the same to operate as a supersedeas.

GEORGE SHIRAS, JR.,
Associate Justice of S. Ct. of U. S.

I, Samuel Bell, clerk of the circuit court of the United States in and for the eastern district of Pennsylvania, do hereby certify that the assignment of errors in above cause have been duly filed in the lower court pursuant to Supreme Court rule 35

SAMUEL BELL,
Clerk Circuit Court U. S., East. Dist. of Penna.

Endorsed: No. 44. Oct. sess., 1886. C. C. U. S., E. D. of Penna. Pullman's Palace Car Co. *v.* Central Transportation Co. Central Transportation Co. *v.* Pullman's Palace Car Co. Cross-bill. Petition for allowance of appeal to Supreme Court of the United States. Wintersteen, Lincoln, Isham. Filed Feb. 4, 1896. Samuel Bell, clerk.

2054 Know all men by these presents that we, Pullman's Palace Car Company, as principal, and Geo. M. Pullman, as surety, are held and firmly bound unto Central Transportation Company in the full and just sum of five millions of dollars, to be

paid to said Central Transportation Company, its certain attorney, successors, or assigns; to which payment, well and truly to be made, we bind ourselves, our successors, heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this first day of February, in the year of our Lord one thousand eight hundred and ninety-six.

Whereas lately, at a session of the circuit court of the United States for the eastern district of Pennsylvania, in a suit depending in said court between said Central Transportation Company and said Pullman's Palace Car Company, a final decree was rendered against the said Pullman's Palace Car Company, and the said Pullman's Palace Car Company having obtained the allowance of an appeal and filed a copy thereof in the clerk's office of said court to reverse the said decree in the aforesaid suit, and a citation directed to the said Central Transportation Company, citing and admonishing it to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said Pullman's Palace Car Company shall prosecute said appeal to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

PULLMAN'S PALACE CAR COMPANY,
By GEO. M. PULLMAN, *President.*
GEO. M. PULLMAN. [SEAL.]

Sealed and delivered in presence of—

F. B. DANIELS.

Attest: A. S. WEINSHEIMER, *Secretary.*

Approved by—

GEORGE SHIRAS, JR.,
Associate Justice of the Supreme Court of the United States.

2055 STATE OF ILLINOIS, } ss:
County of Cook, }

Geo. M. Pullman, being first duly sworn, on oath says that he is the surety on the within bond, is a resident of the city of Chicago, State of Illinois, and is worth more than two millions of dollars in property liable to execution other than the stock or securities of Pullman's Palace Car Company and over and above all his debts and liabilities.

GEO. M. PULLMAN.

Subscribed and sworn to by said Geo. M. Pullman before me, a notary public of said State, in and for said county, this first day of February, 1896, as witness my hand and seal of office.

L. E. McPHERSON,
[SEAL.] *Notary Public.*

2056 Referring to the annexed bond for five millions of dollars executed by Pullman's Palace Car Company, as principal, and Geo. M. Pullman, as surety, to Central Transportation Company, dated the first day of February, 1896, and expected to be used or filed some day in February, 1896, for the purposes of a supersedeas on an appeal to the Supreme Court of the United States from a decree of the circuit court of the United States for the eastern district of Pennsylvania, I, for value received, do hereby guarantee to the obligees of said bond that the same is good and collectible to the amount of two millions of dollars, and do promise and bind myself to said obligees that I will pay the sum of two millions of dollars, according to the conditions of said bond, in the event that by default or otherwise the said bond becomes due and payable.

Witness my hand and seal this first day of February, 1896.

MARSHALL FIELD. [SEAL.]

The above bond approved Feb. 3d, 1896.

GEORGE SHIRAS, JR.,
Associate Justice of Supreme Court of the U. S.

2057 STATE OF ILLINOIS, } ss:
County of Cook, }

Marshall Field, being first duly sworn, on oath says that he is the person executing the foregoing instrument of guaranty, is a resident of the city of Chicago, State of Illinois, and is worth more than two millions of dollars in property liable to execution other than the stock or securities of Pullman's Palace Car Company and over and above all his debts and liabilities.

MARSHALL FIELD.

Subscribed and sworn to by Marshall Field before me, a notary public of said State, in and for said county, this first day of February, 1896, as witness my hand and seal of office.

[SEAL.] A. S. WEINSHEIMER,
Notary Public.

2058 Referring to the bond for five millions of dollars executed by Pullman's Palace Car Company, as principal, and Geo. M. Pullman, as surety, to Central Transportation Company, dated the first day of February, 1896, and expected to be used or filed some day in February, 1896, for the purposes of a supersedeas on an appeal to the Supreme Court of the United States from a decree of the circuit court of the United States for the eastern district of Pennsylvania, I, for value received, do hereby guarantee to the obligees of said bond that the same is good and collectible to the amount of one million of dollars, and do promise and bind myself to said obligees that I will pay the sum of one million dollars, according to the conditions of said bond, in the event that by default or otherwise the said bond becomes due and payable.

Witness my hand and seal this first day of February, 1896.

JOHN W. DOANE. [SEAL.]

The above bond approved Feb. 3d, 1896.

GEORGE SHIRAS, JR.,
Asso. Justice of the Supreme Court of the United States.

2059 STATE OF ILLINOIS, }
County of Cook, } ss:

J. W. Doane, being first duly sworn, on oath says that he is the person executing the foregoing instrument of guaranty, is a resident of the city of Chicago, State of Illinois, and is worth more than one million of dollars in property liable to execution other than the stock or securities of Pullman's Palace Car Company and over and above all his debts and liabilities.

J. W. DOANE.

Subscribed and sworn to by said J. W. Doane before me, a notary public of said State, in and for said county, this first day of February, 1896, as witness my hand and seal of office.

[SEAL.] L. E. McPHERSON,
Notary Public.

Endorsed: No. 44. Oct. sess., 1886. C. C. U. S., E. D. of Pa. Pullman's Palace Car Co. *vs.* Central Transportation Co. Central Transportation Co. *vs.* Pullman's Palace Car Co. Bond surappeal. Filed Feb. 4, 1896. Samuel Bell, clerk.

2060 Whereas allowance of appeal from final decree in the suit lately depending in the circuit court of the United States for the eastern district of Pennsylvania between Central Transportation Company and Pullman's Palace Car Company to the Supreme Court of the United States was made on the petition of Pullman's Palace Car Company on the first day of February, 1896, and a citation thereupon was duly issued to Central Transportation Company dated February 3, 1896, and returnable thirty days from the date thereof;

And whereas a bond surappeal, dated February 1st, 1896, in the penalty of five million dollars ($5,000,000), signed by Pullman's Palace Car Company, as principal, and by George M. Pullman, as surety, and obligations of guaranty as to the collectibility of the said bond to the amounts in the said obligations of guaranty respectively set forth, signed by Marshall Field and John W. Doane, accompanying the same, have been duly filed in the said cause;

And whereas it is recited in the said bond that the above citation so as aforesaid issued is directed to the said Central Transportation Company, citing and admonishing it to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next, the true fact being that the said citation is made returnable as aforesaid within thirty days from the date thereof, to wit, within thirty days from the third day of February, 1896:

Now it is hereby agreed that upon the filing of this instrument the above recital shall be and be considered to be corrected accord-

ing to the true fact, and it is further agreed that the obligations of the principal and the surety on the said bond and of the said guarantors thereof shall be and continue in full force and virtue in all respects as fully and entirely as if the said bond had truly recited the citation as hereinbefore corrected.

2061 In witness whereof Pullman's Palace Car Company has hereunto caused its common and corporate seal to be affixed, and the said George M. Pullman, surety, and Marshall Field and John W. Doane, guarantors, have hereunto set their respective hands and seals this 8th day of February, 1896.

PULLMAN'S PALACE CAR COMPANY,
By GEO. M. PULLMAN, *President.*

Witness:
F. B. DANIELS.

[Corporate Seal.]

Attest: A. S. WEINSHEIMER, *Secretary.*

GEO. M. PULLMAN. [SEAL.]

F. B. DANIELS.

MARSHALL FIELD. [SEAL.]

F. B. DANIELS.

JOHN W. DOANE. [SEAL.]

J. W. DOANE, JR.

Endorsed: No. 44. Oct. sess., 1886. C. C. U. S., E. D. of Penna. Pullman's Palace Car Company *vs.* Central Transportation Co. Agreement as to correction of recital in bond surappeal to Supreme Court U. S. Filed Feb. 19, 1896. Samuel Bell, clerk.

2062 UNITED STATES OF AMERICA, *ss:*

To the Central Transportation Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the clerk's office of the circuit court of the United States for the eastern district of Pennsylvania, wherein Pullman's Palace Car Company is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable George Shiras, Jr., associate justice of the Supreme Court of the United States, this third day of February, in the year of our Lord one thousand eight hundred and ninety-six.

GEORGE SHIRAS, JR.,
Associate Justice of the Supreme Court of the United States.

We accept service of the within citation for the Central Transportation Company.

FRANK P. PRICHARD,
JOHN G. JOHNSON,
Per S. P. B.

2063 UNITED STATES OF AMERICA, *Eastern District of Pennsylvania,* } *sct:*

I, Samuel Bell, clerk of the circuit court of the United States of America for the eastern district of Pennsylvania, in the third circuit, do hereby certify the foregoing to be a true and faithful copy of the original pleas and proceedings in the case of Pullman's Palace Car Company *vs.* Central Transportation Company, No. 44, October session, 1886, and Central Transportation Company *vs.* Pullman's Palace Car Company, cross-bill, No. 44, October session, 1886, on file and now remaining among the records of the said court in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this 28th day of February, in the year of our Lord one thousand eight hundred and ninety-six, and of the Independence of the United States the one hundred and 20th.

Seal U. S. Circuit Court, E. D. Pennsylvania.

SAMUEL BELL,
Clerk of C. C.

Endorsed on cover: Case No. 16,212. E. Pennsylvania C. C. U. S. Term No., 922. Pullman's Palace Car Company, appellant, *vs.* Central Transportation Company. Filed March 5, 1896.

1209 PULLMAN'S PALACE CAR COMPANY *v.* CENTRAL TRANSPORTATION COMPANY. } C. C. U. S., E. D. of Pa., October Sess., 1886. No. 44.

CENTRAL TRANSPORTATION COMPANY *v.* PULLMAN'S PALACE CAR COMPANY. } Cross-bill.

The Pullman's Palace Car Company, conceiving itself aggrieved by the decree entered in this case as of January 24, 1896, which said final decree is in the words and figures as follows:

And now, January 21st, 1896, the above cause having been heard upon exceptions to the report of Theodore M. Etting, Esq., master, and having been argued by counsel for the respective parties and considered by the court, it is ordered and decreed, in conformity with the opinions of the court filed:

First. That both the exceptions filed by the Central Transportation Company and the exceptions filed by Pullman's Palace Car Company to the master's report be dismissed.

Second. That Pullman's Palace Car Company pay to the Central Transportation Company the sum of four million two hundred and thirty-five thousand and forty-four dollars.

Third. That Pullman's Palace Car Company pay the costs of this cause incurred on account of the cross-bill and by other decrees and conclusions of the court in the above-entitled cause, and representing that it has filed with the clerk of the court below an assignment of errors, pursuant to rule eleven of the rules of the circuit court of appeals, hereby prays an appeal therefrom to the circuit court of appeals in and for the third circuit under and by virtue of the provisions of the act of Congress of March 3, 1891.

And it prays this appeal may be allowed, and that a transcript of the record and proceedings and papers upon which said decree and conclusions were made, duly authenticated, may be sent to the circuit court of appeals.

A. H. WINTERSTEEN.
J. S. RUNNELLS.
ROBERT T. LINCOLN.
EDWARD S. ISHAM.

And now, this 29th day of April, 1896, it is ordered that the appeal be allowed as prayed for, upon the Pullman's Palace Car Company giving a bond according to law in the sum of five thousand dollars, which shall be for costs only.

(Signed) GEORGE SHIRAS, JR.,
Associate Justice of the Supreme Court of the United States.

Endorsed: No. 44, Oct. sess., 1886. C. C. U. S., E. D. of Penna. Pullman's Palace Car Co. *vs.* Central Transportation Co. Central Transportation Co. *vs.* Pullman's Palace Car Co. Cross-bill. Petition for allowance of appeal to circuit court of appeals for the third circuit. Filed April 28, 1896. Samuel Bell, clerk. Wintersteen, Runnells, Lincoln, Isham.

1210 PULLMAN'S PALACE CAR COMPANY *vs.* CENTRAL TRANSPORTATION COMPANY. } C. C. U. S., E. D. of Pa., October Sessions, 1886. No. 44.

CENTRAL TRANSPORTATION COMPANY *vs.* PULLMAN'S PALACE CAR COMPANY. } Cross-bill.

Assignment of Errors.

1. The court erred in denying the motion of the complainant in the original bill to dismiss the said bill, and in refusing to dismiss the original bill on said motion.

2. The court erred in allowing the motion of defendant in the original bill for leave to file the cross-bill in this cause, and in permitting said defendant to file the said cross-bill.

3. The court erred in overruling the demurrers of the complainant in the original bill, which were filed to said cross-bill by said complainant, and in overruling each of the said several demurrers.

4. The court erred in taking cognizance as a court of equity of the subject-matter of said cross-bill, and in holding that the subject-matter of said cross-bill, being of a purely legal nature and of the enforcement of a purely legal right, was not excluded from the cognizance of equity by the force of the seventh amendment to the Constitution of the United States, and in denying the right of trial by jury guaranteed by said amendment to the Constitution of the United States.

5. The court erred in not holding that the subject-matter of said cross-bill was the proper subject-matter of action at law and of trial at law and by jury only, both under the provisions of the seventh amendment of the Constitution of the United States and of section 723 of the Revised Statutes of the United States.

6. The court erred in rendering the opinion and in entering the order which was entered on the 18th day of December, 1894, in which the said cause was referred to the master in chancery, and in the conclusions of law and in the directions to said master and the other provisions contained in said order.

7. The court erred in holding in said opinion and order that, under the circumstances stated in said cross-bill, the complainant therein was entitled to any decree for the restoration of property or the value thereof delivered to the cross-defendant in preformance of the terms and for the purposes of the contract of lease dated the 17th day of February, 1870, and mentioned in said cross-bill, and which is stated therein to have been held illegal and void by the Supreme Court of the United States, or to any account of the value or of the earnings made by the use of said property or any part thereof by the cross-defendant, or to any affirmative intervention of the court whatever on behalf of the said cross-complainant.

8. The court erred in holding that any property was ever
1211 transferred to or was ever received by The Pullman Company, the cross-defendant, under the void lease of 1870 aforesaid,

except such corporeal and tangible property as was susceptible of physical and manual delivery and of an actual change of possession, notwithstanding such transfer and change of possession, might be unauthorized or in violation of law.

9. The court erred in holding that the contracts of the Central Transportation Company with various railway companies mentioned in the pleadings in the original and cross cause and the patent rights also mentioned therein and in the said opinion and order of the said court entered on the said 18th day of December, 1894, and in the said contract of lease constituted "property" which was transferred to and received by said cross-defendant under said void lease, and in holding that said cross-defendant is bound to restore or pay the value of said contracts and patents or to account for any earnings made by the use thereof.

10. The court erred in holding that any earnings had been made by the use of said contracts and patents by the cross-defendant.

11. The court erred in holding that by force of any assignment or assignments under said lease or otherwise there was ever any transfer by the cross-complainant to the cross-defendant of any incorporeal and intangible rights created by contract with railway companies or otherwise, and in holding that any transfer of such incorporeal rights or property could occur except by or in accordance with the operation of law, and in holding that any transfer of such rights or property made by or for the purposes of the void lease was made effectual by act of the parties or by operation of law so as to make the cross-defendant lawfully responsible therefor or holden to make compensation therefor.

12. The court erred in holding that a transfer of such incorporeal and intangible corporate rights could be made effectual by the act of the parties, although contrary to law, so as to enable the cross-defendant to be clothed with said rights and the power to exercise them and dispose of them, and so as to make said cross-defendant lawfully chargeable therewith under said cross-bill and responsible therefor, or for the use thereof.

13. The court erred in holding that the contracts made subsequent to the making of said void lease and which were made between the said cross-defendant and the Pennsylvania Railroad Company were made in exchange for or in substitution for railway contracts purporting to have been assigned to said cross-defendant by the cross-complainant, by or for the purposes of said void lease, so as to give rise to any rights of the Central Transportation Company therein, either by subrogation or derived in any other way through assignments made for the purposes of said void lease or by acts of the parties.

14. The court erred in holding that the Central Transportation Company transferred to the Pullman Company its property and business, including all the incorporeal and intangible contract rights and patents, as well as its cars and other tangible property, and that the Pullman Company "took possession of the property
1212 and the business transferred, consolidating it with its own," and that "the property and the business" of the Central

Transportation Company were completely merged in the property and the business of the Pullman Company, as the parties intended when executing the void lease, and that it had "become incorporated with the business and property of the cross-defendant," and that compensation must therefore be made.

15. The court erred in holding that the measure of compensation to be made in such case was the value of the property, including therein the tangible and intangible property of the Central Transportation Company and its business at the time the same purported to have been transferred in pursuance of the void lease, namely, in A. D. 1870, together with its earnings since, less the amount paid as rent.

16. The court erred in holding by its judgment of January 13, 1896, that "the measure of compensation" was the value of the property when the lease was disaffirmed in 1885, together with the total earnings to that time, and in assuming the valuation of the property in 1870 as made by the master as the measure of value of the same property in 1885, and in entering a decree against the cross-defendant for the amount of that valuation, together with the total earnings made by said cross-defendant during the period preceding disaffirmance of the lease and interest on that total amount from 1885 to date of decree.

17. In view of the holding of the court that the lease for the period preceding its disaffirmance for its illegality should stand as executed between the parties, the court erred in not holding that the use of the property and earnings thereof were represented and compensated by merely a part of the rental paid, and in not holding that the residue of the amount paid as rent (being that part thereof which the court held had been paid for "the unlawful consideration that the Central Company would abstain from exercising its franchises") should be applied to the credit of the cross-defendant upon any other moneys then payable by it to the cross-complainant.

18. In view of the holding of the court that the lease, though void, should be treated as executed between the parties, and that their executed dealings should stand uninterfered with by the court, the court erred in not holding the rental reserved and paid to have been an agreed and conclusive valuation by the parties of the use of the property for that period and also of the unlawful consideration which existed in the covenant of the lessor not to exercise its franchises.

19. The court erred in holding that the said cross-defendant was lawfully holden to said cross-complainant for the value of said property when transferred, but did not thereby become the owner of the property so paid for, but that the same remained the property of the said cross-complainant, and that it remained entitled to the earnings made by the subsequent use of said property.

20. The court erred in rendering the opinion and in the
1213 conclusions of law contained therein, which it rendered and entered on the 13th day of January, 1896, and erred in each of said conclusions.

21. The court erred in overruling each of the exceptions of the cross-defendant to the report filed in this cause by Theodore M. Etting, Esq., master in chancery, and in dismissing the same and each of them.

22. The court erred in confirming the report of the master filed and made in this court.

23. The court erred in holding that the cross-defendant had refused or neglected to furnish statements and produce in evidence before the master all the earnings called for by the order of reference to the master, and in holding that the cross-defendant had failed or refused to disclose any earnings called for by the master under the authority of and in pursuance of the order of reference.

24. The court erred in holding that the finding of the master was correct, that certain railway contracts belonging to the Central Transportation Company and which were originally made to continue "during the continuance of incorporation" of the Central Transportation Company were continued in force and extended for the period of ninety-nine years by force of the act of the legislature of the State of Pennsylvania of the 9th of February, A. D. 1870, by which the said transportation company was given a corporate life for another period of ninety-nine years from the time of the expiration of its then existing charter; and the court erred in not upholding the claim of the cross-defendant that such effect of the said legislative act of the 9th of February, 1870, was in conflict with and forbidden by article 1, section 10, of the Constitution of the United States, which prohibits on the part of the States any enactment impairing the obligation of contracts.

25. The court erred in holding that the master was entitled to call, under his order of reference, upon the cross-defendant for statements of earnings made after the expiration, according to their original terms of railway contracts made to continue during the incorporation of the Central Transportation Company.

26. The court erred in holding that the valuation of the property made by the master as of 1870, based on the market value then of the shares of capital stock, was a measure of the value in 1885, when the lease was disaffirmed of the said property, and in finding that the value in 1885 was presumably greater of such property than in 1870, without any reference to the master or other opportunity given to show the actual value of the said property or the actual market value of the capital stock in A. D. 1885.

27. The court erred in holding that the cross-complainant was entitled to recover the value of the property assumed to have been transferred in 1870, and the earnings of the property from that time until the lease was declared void by the cross-defendant, and then interest thereafter on the total amount of said valuation and earnings, and is thereby giving operation and effect for that period to the provisions and purposes of the void lease for the benefit of
1214 the cross-complainant, and in raising in legal effect a trust for that purpose upon the basis of the illegal lease.

28. The court erred in holding that it would treat the said void contract of lease as executed "up to 1885," when the lease was dis-

affirmed by the cross-defendant, and that "to the extent its provisions were executed the court would not interfere," and in not (in accordance with such holding) treating as the matter so executed the alleged use and right to the earnings of the property of the cross-complainant on the one hand by the cross-defendant, and the reception in compensation therefor of so much of the reserved rental under the lease by the cross-complainant on the other as was not paid as compensation for the unlawful covenant of the cross-complainant not to exercise its franchises, and in not also holding that other matters were equally executed, namely, that during that period prior to 1885 all the assigned railway contracts and patents had expired and no longer existed and had no value.

29. The court erred in this, that while purporting to hold that it would treat the void contract of lease as executed "up to 1885," when it was disaffirmed by the cross-defendant, it thereupon, nevertheless, under cover of letting the acts of the parties and what they had done stand for themselves, proceeded to lend its aid affirmatively on behalf of one party (the cross-complainant) and against the other, and to compel the performance during that period of what said other party had not done nor was required by the contract to do, and to enforce an accounting by that party for that same period of the earnings made by it in its assumed operation under and execution of the illegal lease.

30. The court erred in holding that cross-defendant was holden to account to the cross-complainant for a capitalized value of the railway contracts and patents mentioned in the said cross-bill, and also for the earnings made by the use thereof, when the said contracts and patents were by their nature necessarily consumed and exhausted in the making of the said earnings.

31. The court erred in confirming the valuation made by the master of the property alleged to have been transferred to and received by the cross-defendant in 1870, because the said valuation was made by the master upon an unlawful and improper basis, namely, the market value of the shares of the capital stock of the Central Transportation Company, and equalled the value so ascertained of the total number of shares of the entire capital stock of the said transportation company, whereas such valuation necessarily included value of a transfer of its franchises and other elements of value to the transportation company which it could not assign and transfer, and also involved the unlawful elements of abandonment of its business and the disabling itself from performance of its corporate and public duties, which could not lawfully be made a basis of compensation and recovery from the cross-defendant.

32. The court erred in this, that the lease being adjudged to be void for fault of the cross-complainant, it was at all times
1215 primarily its duty to resume its functions, its property, and its business, and it was error to charge the cross-defendant with compensation to the cross-complainant for the value or the earnings of business which it abandoned and unlawfully neglected to resume, or for loss of business which it incurred by its own unlawful acquiescence or passivity.

33. The court erred in decreeing that the exceptions filed by Pullman's Palace Car Company to the master's report be dismissed.

34. The court erred in decreeing that Pullman's Palace Car Company pay to the Central Transportation Company the sum of four million two hundred and thirty-five thousand and forty-four dollars.

35. The court erred in decreeing that Pullman's Palace Car Company pay the costs of this cause incurred on account of the cross-bill.

A. H. WINTERSTEEN,
ROBERT T. LINCOLN,
EDWARD S. ISHAM,
Attorneys for Pullman's Palace Car Co.

(Endorsed:) No. 44, October sess., 1886. C. C. U. S., E. D. of Pa. Pullman's Palace Car Co. *vs.* Central Transportation Co. Central Transportation Co. *vs.* Pullman's Palace Car Co. Cross-bill. Assignment of errors surappeal to circuit court of appeals. Wintersteen, Lincoln, Isham. Filed April 28, 1896. Samuel Bell, clerk, &c.

Know all men by these presents that we, Pullman's Palace Car Company, as principal, and Geo. M. Pullman, as surety, are held and firmly bound unto Central Transportation Company in the full and just sum of five thousand dollars ($5,000.00), to be paid to said Central Transportation Company, its certain attorney, successors or assigns; for the payment of which, well and truly to be made, we bind ourselves, each of us, and our and each of our successors, heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated the twenty-fifth day of April, in the year of our Lord one thousand eight hundred and ninety-six.

Whereas lately, at a session of the circuit court of the United States for the eastern district of Pennsylvania, in a suit depending in said court between said Central Transportation Company and said Pullman's Palace Car Company, a final decree was rendered against the said Pullman's Palace Car Company, and the said Pullman's Palace Car Company is prosecuting an appeal to the United States circuit court of appeals for the third circuit to reverse the said decree in the aforesaid suit: Now the condition of the above obligation is such that if the said Pullman's Palace Car Company shall prosecute said appeal to effect and answer all costs if it
1216 fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

PULLMAN'S PALACE CAR COMPANY,
By GEO. M. PULLMAN, *President.*
GEO. M. PULLMAN. [SEAL.]

Signed, sealed, and delivered in the presence of—
L. E. McPHERSON.

Attest:
[SEAL.] A. S. WEINSHEIMER, *Secretary.*

Approved:
GEORGE SHIRAS, JR.,
Assoc. Justice of the S. Ct. of U. S.

STATE OF ILLINOIS, } ss:
County of Cook, }

Geo. M. Pullman, being first duly sworn, on oath says that he is the surety on the within bond; is a resident of the city of Chicago, State of Illinois, and is worth more than ten thousand dollars in property liable to execution other than the stock or securities of Pullman's Palace Car Company and over and above all his debts and liabilities.

GEO. M. PULLMAN.

Subscribed and sworn to by the said Geo. M. Pullman before me, a notary public of said State, in and for said county, this twenty-fifth day of April, 1896, as witness my hand and seal of office.

L. E. McPHERSON,
[SEAL.] *Notary Public.*

Endorsed: No. 44, Oct. sess., 1886. C. C. U. S., E. D. of Penna. Pullman's Palace Car Co. *vs.* Central Transportation Co. Bond of Pullman's Palace Car Company surappeal to circuit court of appeals. Filed April 29, 1896. Samuel Bell, clerk, &c.

UNITED STATES OF AMERICA, ss:

The President of the United States to Central Transportation Company, Greeting:

You are hereby cited and admonished to be and appear at a United States circuit court of appeals for the third circuit, at the city of Philadelphia, within thirty days, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the eastern district of Pennsylvania, wherein Pullman's Palace Car Company is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

1217 Witness the Honorable George Shiras, Jr., associate justice of the Supreme Court of the United States, this 29th day of April, in the year of our Lord one thousand eight hundred and ninety-six.

GEORGE SHIRAS, JR.,
Associate Justice of the Supreme Court of the United States.

I accept service of this citation for the Central Transportation Co.

JOHN G. JOHNSON,
Per P., *For Central Trans. Co.*

May 1, 1896.

UNITED STATES OF AMERICA, } sct:
Eastern District of Pennsylvania, }

I, Samuel Bell, clerk of the circuit court of the United States of America for the eastern district of Pennsylvania, in the third circuit, do hereby certify the foregoing to be a true and faithful copy

of the original pleas and proceedings in the case of Pullman's Palace Car Company *vs.* Central Transportation Company, No. 44, October sessions, 1886, on file and now remaining among the records of the said court in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this 11th day of May, in the year of our Lord one thousand eight hundred and ninety-six, and of the Independence of the United States the one hundred and 20th.

Seal U.S. Circuit Court, E. D. Pennsylvania.

SAMUEL BELL,
Clerk of C. C.

And afterwards, to wit, on the twenty-second day of September, A. D. 1896, this cause being called for argument on the transcript of record from the circuit court of the United States for the eastern district of Pennsylvania, before Hon. George Shiras, Jr., circuit justice, and Hon. Leonard Wales and Hon. Edward T. Green, district judges, and being argued by counsel for the respective parties, and the court, not being fully advised in the premises, takes further time for consideration thereof.

And afterwards, to wit, on the twelfth day of October, A. D. 1896, comes the parties aforesaid, by their counsel aforesaid, and the court, now being fully advised in the premises, renders the following opinion, to wit:

United States Circuit Court of Appeals for the Third Circuit.

PULLMAN'S PALACE CAR COMPANY, Appellant,
vs.
CENTRAL TRANSPORTATION COMPANY.

Appeal from the circuit court of the United States for the eastern district of Pennsylvania.

Argued September 22 and 23, 1896, before Shiras, circuit justice, and Wales and Green, district judges.

We are met at the threshold of this case with a motion to dismiss the appeal, on the ground that it is void, having been taken while a previous appeal to the Supreme Court was pending and undetermined.

The final decree of the circuit court was entered January 26, 1896, and an appeal therefrom to the Supreme Court was taken and allowed on February 1, 1896; that appeal is still undisposed of, and, so far as we are informed, no motion to dismiss the same has been made.

The appeal to this court was taken on April 29, 1896, within the time prescribed by law. If this motion to dismiss should prevail it would be too late to take another appeal, even if the appeal to the Supreme Court should hereafter be held by that court to have

been improvidently taken. The hardship thus resulting would not, of itself, be a sufficient reason why the motion should not be granted, nor can the inaction of the appellee in not at once moving to dismiss the appeal to the Supreme Court, and thus affording an opportunity to the appellant to take a timely appeal to this court, be deemed to estop the appellee from insisting on its present motion, but such resulting hardship may well warrant a refusal of the motion unless it is quite clear that no other course is legally permissible.

Undoubtedly, the principle contended for by the appellee, that a party cannot prosecute two appeals in the same time, may be conceded to be a general one. But does the present case fall within that principle?

The record discloses that the appeal to the Supreme Court was taken under section 5 of the act of March 3, 1891, upon the proposition that the case is one "involving the construction or application of the Constitution of the United States." The appeal to this court is based on the provisions of the sixth section of the act. Should the Supreme Court decide that the case does not present a constitutional question under the fifth section, and hence dismiss that appeal, it would follow that the appellant's proper remedy is by way of appeal to this court under the sixth section. Does the fact that the appellant took a void appeal to the Supreme Court defeat its right of appeal to this court? Or, in other words, is the act of 1891 to be construed as giving an appellant only an election between an appeal under the fifth section and one under the sixth section?

The question thus presented is a new one, and we do not feel disposed to lead the way in so construing the act of 1891 as to practically deprive suitors of the right to appeal under both the fifth and sixth sections. And, of course, it is evident that if an appellant cannot take an appeal under the sixth section until the Supreme Court has decided the appeal under the fifth section, the time prescribed by the statute within which the former must be taken would have elapsed.

Our view is that the party seeking to appeal is not, by the terms and meaning of the statute, put to an election between the remedies of the fifth and sixth sections, but has a right to raise a constitutional question by a resort to the Supreme Court, and to avail itself of the defenses permissible under the sixth section by an appeal to this court.

Of course, if the Supreme Court should hold that it has jurisdiction under the fifth section, that court will, in the case of a constitutional question, consider and decide the entire case (Chappel *v.* United States, 160 U. S., 499), and in that event no judgment of this court would be necessary. Should, however, the Supreme Court decide that it has no jurisdiction to entertain the appeal, this court will be left free to act under the sixth section. Congress was, of course, well aware that, in the condition of the docket of the Supreme Court as it is and has been for years past, the hearing and determination of an appeal to that court could not be had within

the time fixed for an appeal to this court, and we are unwilling to suppose that a delay so occasioned was intended to operate as a denial to the party of its rights under the sixth section.

We think the case of McLish *v.* Roff (141 U. S., 661), relied on by the appellee, is not inconsistent with this view. The appeal there was under the first clause of the fifth section, raising the question of the jurisdiction of the circuit court, and the writ of error was sued out to the Supreme Court before final judgment. It was held that the question of the jurisdiction of the circuit court could only be raised by electing to have such question certified to the Supreme Court, where that question only would be considered. The language of the court must be read in view of that single question. The present case is one arising under other clauses of the fifth section, whereby are raised questions involving the construction or application of the Constitution of the United States, and which by the terms of the statute are for the sole and exclusive jurisdiction of the Supreme Court. That this is the true reading of that decision appears from its statement that the act "provides for the distribution of the entire appellate jurisdiction of our national system between the Supreme Court of the United States and the circuit court of appeals therein established by designating the classes of cases in respect of which each of those two courts shall respectively have jurisdiction. But as to the mode and manner in which these revisory powers may be invoked, there is, we think, no provision in the act which can be construed into so radical a change in all the existing statutes and settled rules of practice and procedure of Federal courts as to extend the jurisdiction of the Supreme Court to review of jurisdictional cases in advance of the final judgments upon them."

The motion to dismiss the appeal is overruled, and the cause is continued to await the result of the appeal to the Supreme Court.

GEORGE SHIRAS, JR., *C't Justice.*

Oct. 7th, 1896.

United States Circuit Court of Appeals for the Third Circuit.

PULLMAN'S PALACE CAR COMPANY, Appellant,
vs.
CENTRAL TRANSPORTATION COMPANY.

And now, September 14, 1897, comes the appellant, The Pullman's Palace Car Company, and moves that in accordance with the authority conferred by the sixth section of the act of Congress of March 3, 1891, being the act to establish circuit courts of appeals, this court will certify to the Supreme Court of the United States for its instruction thereon the question of law, namely: The question whether this court under this appeal has jurisdiction according to the revisions of the act of Congress aforesaid to hear and determine this cause.

A. H. WINTERSTEEN,
EDWARD S. ISHAM,
JOSEPH H. CHOATE,
For Appellants.

(Endorsed:) No. —. Sept. term, 1897. C. C. U. S., third circuit. Pullman's Palace Car Co., appellant, *v.* Central Transportation Co., appellee. Motion for certification of question to Supreme Court. Filed September 15, 1897.

And afterwards, to wit, on the first day of October, A. D. 1897, this motion being called for argument before Hon. George Shiras, Jr., circuit justice, and Hon. Andrew Kirkpatrick, district judge, and being argued by counsel for the respective parties, and the court, being fully advised in the premises, renders the following opinion, to wit:

United States Circuit Court of Appeals, Third Circuit.

PULLMAN'S PALACE CAR COMPANY, Appellant,
—
CENTRAL TRANSPORTATION COMPANY.

Appeal from the circuit court of the United States for the eastern district of Pennsylvania.

Before Hon. George Shiras, Jr., associate justice; Hon. Andrew Kirkpatrick, district judge.

Mr. SHIRAS, *Associate Justice:*

This is a motion asking us to certify to the Supreme Court the question whether this court has jurisdiction to hear and determine the cause.

Upon a former occasion we felt constrained to refrain from passing on the merits of the case while it was pending on an appeal in that court; nor do we now perceive that any useful result would be promoted by granting the present motion. Until the Supreme Court shall have determined the questions there pending, on the appeal and on the motion to dismiss the appeal, this court thinks it would not be proper to deal with the case on its merits, and it may be that the action of the Supreme Court may relieve this court from any further duty in the case.

Filed October 1st, 1897.

UNITED STATES OF AMERICA, *sct:*

I, William V. Williamson, clerk of the United States circuit court of appeals for the third circuit, do hereby certify the foregoing pages from one to twelve hundred and twenty-two, inclusive, to contain a full, true, complete, and faithful copy of the original transcript of record in the case of Pullman's Palace Car Company, appellant, *vs.* The Central Transportation Company on file and now remaining among the records of the said court in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this — day of October, in the year of our Lord one thousand eight hundred and ninety-seven, and of the Independence of the United States the one hundred and twenty-second.

Seal United States Circuit Court of Appeals, Third Circuit.

WM. V. WILLIAMSON,
Clerk U. S. Circuit Court of Appeals, Third Circuit.

Supreme Court U. S.
FILED,
OCT 28 1897
JAMES H. McKENNEY,
CLERK

Supreme Court of the United States.

October Term, 1897, No. 496

IN THE MATTER

OF

THE PETITION OF PULLMAN'S PALACE CAR COMPANY

for

WRIT OF CERTIORARI.

Petition for Writ of Certiorari Requiring the Circuit Court of Appeals for the Third Circuit to Certify to the Supreme Court for its Review and Determination the Case of Pullman's Palace Car Company, Appellant, against The Central Transportation Company, Appellee.

A. H. WINTERSTEEN,
EDWARD S. ISHAM,
JOSEPH H. CHOATE,
Counsel for Petitioner.

Supreme Court of the United States,

OCTOBER TERM, 1897.

Petition for writ of *certiorari* requiring the Circuit Court of Appeals for the Third Circuit to certify to the Supreme Court for its review and determination the case of Pullman's Palace Car Company, appellant, *versus* the Central Transportation Company, appellee.

To the Supreme Court of the United States:

The petitioner, the above mentioned appellant, respectfully represents as follows:

The original bill was filed in April, 1887, and in April, 1891, before the cause had been heard or was ready for hearing and before any order affecting its merits had been made, the complainant moved the dismissal of the bill at its own cost, because in the meantime the subject matter of the controversy had been entirely disposed of by a judgment of this Court rendered in another cause between the same parties (139 U. S., 24). The defendant, opposing the dismissal procured the original cause to be compulsorily retained for the purpose of giving support to a so-called cross-cause to be instituted by the defendant (Record, p. 552; 49 Fed. Rep., 261). The complainant, nevertheless, abandoned its bill, and no proceedings have since been had except in that cross-cause.

When the original bill was filed there was subsisting between the parties the contract called a lease, which was the subject of the judgment of this Court in the case above cited.

Acting upon authority of express provisions of the lease itself, the lessee, in June, 1886, had given notice of an election to terminate it. The lease, however, contained stipulations in such case for a restoration of the demised property, and a restoration conforming to the terms of the lease had become impossible. The primary object of the bill, therefore, was to obtain the aid of the Court in a substantial instead of a literal performance of those terms of the lease which related to the restoration of the subject matter of the demise.

The bill also averred as an additional ground for equitable relief, that the complainant had, in January, 1885, been dissuaded by the defendant from its then declared purpose to terminate the lease, and induced to adopt the alternative provided of paying the defendant an equitable share of the revenues that might be realized under the lease, which was then agreed to by the defendant and the agreement afterwards repudiated; and it prayed the Court to decree whether the election then made to pay a share of the net revenues instead of terminating said lease was not conclusive upon both parties thereto. If not so binding, it prayed that the act of termination declared in June, 1886, might relate back and take effect from January, 1885; and it prayed injunction against the further prosecution of suits at law for rental accruing after January, 1885, and against suits at law for installments of rental accruing after the termination of the lease, and for a receiver to take possession of the railway cars or other property which the bill *seeking affirmative performance of the lease* offered to turn over to the defendant.

Incidentally the bill stated to the Court the advice of counsel which the complainant had received that the lease itself was invalid, and not enforceable

by either party. It did not insist or aver that the lease was void for illegality, it did not repudiate it or disaffirm it, or refuse on that ground to pay rental or otherwise to perform its terms. On the contrary, the purpose and prayer of the bill were affirmative execution of those provisions of the lease itself which provided in a certain event for termination of the lease according to its terms.

The cross-bill set forth the judgment of the Supreme Court of the United States in the case above cited (Pullman's Pal. Car Co. *vs.* Cent. Trans., 139 U. S., 24), and that the Supreme Court had held the lease "invalid by reason of the same having been *ultra* "*vires*, and for other reasons." (Rec., p. 556); and that said agreement was therefore null and void. It averred that all the property described in the lease had been delivered to the complainant in pursuance of the lease and for its specified purposes, and that it was the duty of the cross-defendant to return said property, including, *inter alia*, the patent rights, the railway sleeping cars, with their bedding and equipment, the contracts which had been assigned to it, and all new contracts and renewals thereof entered into with any of the railroad companies with whom the cross-complainant had contracts at the time of making said agreement. The cross-bill then proceeded as follows:

> "If it be not within the power of the said car company to make such delivery, then, as your orator is advised and therefore avers, it is its duty to deliver an equivalent therefor, and to account for the profits which it has derived under and by reason of the property delivered to it under said agreement.
>
> "It is further the duty of said car company, as your orator is advised and therefore avers, to fully account for all profits which it derived from the use of said property.
>
> "10. Your orator is advised and therefore avers that the said car company now holds all contracts for transportation made by it with railroad companies with whom there were transportation contracts with your orator at

the time of said agreement of the 17th of February, 1870, in trust for your orator, with a duty to account for the profits derived therefrom.

"Being without an adequate remedy at law, your orator prays equitable relief as follows:

"(*a.*) An account by the said car company of all the profits which it has derived since the making of said agreement of the 17th of February, 1870, by the use of the property transferred to it under said agreement by your orator.

"(*b.*) A decree that the amount found due by said accountant for said use of said property shall be paid over to your orator.

"(*c.*) A decree that the said car company is the trustee for your orator for all contracts for transportation, whether original, new or renewals, held by it with railroad companies with which there were contracts for transportation with your orator at the time of making said agreement of the 17th of February, 1870.

"(*d.*) A decree ordering the said car company to pay to your orator all such sums as shall be due it by said company as such trustee, and that it shall, in the future, from time to time, account for the sums which shall be due by reason of future operations under said contracts.

"(*e.*) Discovery and an account by the said car company of its use and disposition of the property turned over to it by your orator, and a delivery by said car company to your orator of all such property in proper order and condition, or if this cannot be done, a decree that the value thereof shall be paid to your orator, and that all sums derived from said property shall be paid over.

"(*f.*) General relief."

To this cross-bill three demurrers were filed and overruled (Rec., pp. 558-561); and thereupon the Pullman Company, the cross-defendant, by its answer (Rec., p. 562), admitted the delivery to it of the property mentioned in said lease and its schedules, but averred that all the said property was de-

livered and received in pursuance of said lease, and *to be used in promoting the purposes* of said lease, and not otherwise. It showed that all of said railway contracts had expired by lapse of time or otherwise; that none of them reserved any right of renewal to the Central Company, and that all the patent rights had expired. It furnished statements of the use, value and disposition of the railway cars, and the extent to which they had been used up or destroyed in the conduct of the business while the lease was in operation, and averred that during that time it had paid, as compensation under the lease, to the cross-complainant the sum of $3,960,000; that it was at all times the duty of the cross-complainant, said lease being illegal and void, to resume possession of its property or so much of it as continued in existence, and particularly to have accepted the same when tendered to it and offered to be restored in June, 1886; that from that date no obstacle had been placed in the way of its possession, and that it should be deemed to have been in the control and possession thereof; that it had asked the Court to take possession thereof by a receiver, but that said cross-complainant making objection thereto, the Court, refused to do so. Among other things it averred further that the alleged title of the cross-complainant, as presented by said cross-bill, to the property therein mentioned, was a strictly legal title and was the proper subject matter of an action at law if any right of action at all existed therefor, and that any claim to profits or earnings as asserted by said cross-bill, if it existed, was merely an incident to said legal title and equally the subject matter of an action at law; and insisted that if any such right as that asserted by the cross-bill existed in said cross-complainant, the remedy therefor was at law, and the *answer expresly asserted* the claim that, under the *Constitution* of the United States, and the acts of Congress, the court of equity had no jurisdiction thereof.

Testimony having been taken, the cause came on for final hearing, and on December 18, 1894, the Court, by BUTLER, *J.*, filed its opinion shown in the Record at pages 745 and 1126, whereby it held that the cross-defendant must account to the cross-complainant for the value of the property delivered under the lease "when received, together with its earnings since, less the amount paid as rent." The Court at the same time referred the cause to a master, for the purpose of ascertaining these values, and the report of the Master is shown in the Record, pages 1133 to 1183.

On the coming in of the report exceptions were filed by the cross-defendant, which were argued and are shown in the Record, at pages 1185 and 1188. All were dismissed, however.

Certain exceptions were also filed by the counsel for the cross-complainant (Rec., p. 1187), and these were also dismissed; but the suggestions they contained were embodied by the Court in its opinion and judgment, which are shown at page 1194 of the Record.

There the Court declared that the burden was on the cross-defendant to show the earnings and that they were less than the rental; that the Pullman Company was in default for not furnishing evidence not called for by the order of the Court, and that all intendments were adverse to it, and it would be assumed that the earnings were at least equal to the rent, or the Pullman Company would have shown the contrary; that it is liable, not for the value of the property in 1870 when it was received, as was held in the order of reference directing the Master to find the value of that date, but for the value in 1885, when under judgment in suits at law the lease was dissaffirmed; and that the inquiry *had been directed* to the value in 1870 *for the purpose* of ascertaining thereby the value in 1885.

Decree was rendered on the cross-bill for the estimated value of the so-called "plant" or "property" of the Central Transportation Company in 1870, as-

sumed without inquiry or evidence to be its value also in 1885, and for interest thereon from that date, with no account of intermediate interest or earnings or of the payments which amounted without computation of interest to nearly $4,000,000. This judgment is shown on page 1197 of the Record and is as follows:

> "And now, January 24, 1896, the above cause having been heard upon exceptions to the report of Theodore M. Etting, Esq., Master, and having been argued by counsel for the respective parties and considered by the Court, it is ordered and decreed in conformity with the opinions of the Court filed—
>
> FIRST.—That both the exceptions filed by the Central Transportation Company and the exceptions filed by Pullman's Palace Car Company to the Master's report be dismissed.
>
> SECOND.—That Pullman's Palace Car Company pay to the Central Transportation Company the sum of four million two hundred and thirty-five thousand and forty-four dollars.
>
> THIRD.—That Pullman's Palace Car Company pay the costs of this cause incurred on account of the cross-bill."

II. Thereupon the petitioner prayed an appeal to the Supreme Court of the United States and filed an assignment of errors (Rec., pp. 1198-1204), considering that under the provisions of Section 5 of the Act of Congress of March 3, 1891, which direct appeals to be taken from the Circuit Courts to the Supreme Court in any case that involves the construction or application of the Constitution of the United States, and in any case in which the Constitution or law of a State is claimed to be in contravention of the Constitution of the United States, its appeal lay directly to that Court. The direct appeal to the Supreme Court having been resisted (Rec., p. 1199) and the right to such direct appeal having been drawn into question, another and separate appeal was, on April 29, 1896, and

within the time prescribed by law, taken to the United States Circuit Court of Appeals for the Third Circuit.

When, on the 22d of September, 1896, the cause was in that court reached for argument, the appellee presented a motion to dismiss the appeal, contending that it was void, and the Court without jurisdiction, because a previous appeal had been taken to the Supreme Court and was pending there. The Court of Appeals heard argument upon the motion, and also heard argument in the cause upon its merits, but afterwards, on October 7, 1896, entered its order, by which it overruled the motion to dismiss the appeal, and continued the cause, without decision thereof, on account of the question of jurisdiction existing in both courts "to await the result of the appeal to the Supreme Court."

The opinion of the Court, filed upon that hearing, and the entry of that order is as follows:

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE THIRD CIRCUIT.

PULLMAN'S PALACE CAR COMPANY, *Appellant*,

vs.

CENTRAL TRANSPORTATION COMPANY.

Appeal from the Circuit Court of the United States for the Eastern District of Pennsylvania.

Argued September 22 and 23, 1896, before Shiras, Circuit Justice, and Wales and Green, District Judges.

We are met at the threshold of this case with a motion to dismiss the appeal, on the ground that it is void, having been taken

while a previous appeal to the Supreme Court was pending and undetermined.

The final decree of the Circuit Court was entered on January 26, 1896, and an appeal therefrom to the Supreme Court was taken and allowed on February 1, 1896. That appeal is still undisposed of, and, so far as we are informed, no motion to dismiss the same has been made.

The appeal to this Court was taken on April 29, 1896, within the time prescribed by law. If this motion to dismiss should prevail, it would be too late to take another appeal, even if the appeal to the Supreme Court should hereafter be held by that Court to have been improvidently taken. The hardship thus resulting would not, of itself, be a sufficient reason why the motion should not be granted; nor can the inaction of the appellee in not at once moving to dismiss the appeal to the Supreme Court, and thus affording an opportunity to the appellant to take a timely appeal to this Court, be deemed to estop the appellee from insisting on its present motion. But such resulting hardship may well warrant a refusal of the motion unless it is quite clear that no other course is legally permissible.

Undoubtedly, the principle contended for by the appellee, that a party cannot prosecute two appeals in the same case at the same time, may be conceded to be a general one. But does the present case fall within that principle?

The record discloses that the appeal to the Supreme Court was taken under Section 5 of the Act of March 3, 1891, upon the proposition that the case is one "involving the construction or application of the Constitution of the United States." The appeal to this Court is based on the provision of the sixth section of the act. Should the Supreme Court decide that the case does not present a constitutional question under the fifth section, and hence dismiss that appeal, it would follow that the appellant's proper remedy is by way of appeal to this Court under the sixth section. Does the fact that the appellant took a void appeal to the Supreme Court defeat its right of appeal to

this Court? Or, in other words, is the act of 1891 to be construed as giving an appellant only an election between an appeal under the fifth section and one under the sixth section?

The question thus presented is a new one, and we do not feel disposed to lead the way in so construing the Act of 1891 as to practically deprive suitors of the right to appeal under both the fifth and sixth sections. And, of course, it is evident that if an appellant cannot take an appeal under the sixth section until the Supreme Court has decided the appeal under the fifth section, the time prescribed by the statute within which the former must be taken would have elapsed.

Our view is that the party seeking to appeal is not, by the terms and meaning of the statute, put to an election between the remedies of the fifth and sixth sections, but has a right to raise a constitutional question by a resort to the Supreme Court, and to avail itself of the defenses permissible under the sixth section by an appeal to this Court.

Of course, if the Supreme Court should hold that it has jurisdiction under the fifth section, that Court will, in the case of a constitutional question, consider and decide the entire case (*Chappel* v. *United States*, 160 U. S., 499), and, in that event, no judgment of this Court would be necessary. Should, however, the Supreme Court decide that it has no jurisdiction to entertain the appeal, this Court will be left free to act under the sixth section. Congress was, of course, well aware that, in the condition of the docket of the Supreme Court as it is and has been for years past, the hearing and determination of an appeal to that Court could not be had within the time fixed for an appeal to this Court, and we are unwilling to suppose that a delay so occasioned was intended to operate as a denial to the party of its rights under the sixth section.

We think the case of *McLish* v. *Raff* (141 U. S., 661), relied on by the appellee, is not inconsistent with this view. The appeal there was under the first clause of the fifth section, raising the question of the jurisdiction of the Circuit Court, and the writ of error was sued out to the Supreme Court before final judg-

ment. It was held that the question of the jurisdiction of the Circuit Court could only be raised by electing to have such question certified to the Supreme Court, where that question only would be considered. The language of the Court must be read in view of that single question. The present case is one arising under other clauses of the fifth section, whereby are raised questions involving the construction or application of the Constitution of the United States, and which by the terms of the statute are for the sole and exclusive jurisdiction of the Supreme Court. That this is the true reading of that decision appears from its statement that the act "provides for the distribution of the entire appellate jurisdiction of our national system between the Supreme Court of the United States and the Circuit Courts of Appeals therein established, by designating the classes of cases in respect of which each of these two courts shall respectively have jurisdiction. But as to the mode and manner in which those revisory powers may be invoked, there is, we think, no provision in the act which can be construed into so radical a change in all the existing statutes and settled rules of practice and procedure of Federal courts as to extend the jurisdiction of the Supreme Court to the review of jurisdictional cases in advance of the final judgments upon them."

The motion to dismiss the appeal is overruled, and the cause is continued to await the result of the appeal to the Supreme Court.

GEORGE SHIRAS, Jr.,
Ct. Justice,
Oct. 7, 1896.

III.—The appeal taken as aforesaid to the Supreme Court of the United States was, on the calendar, numbered 463 of the October Term, 1896, of that Court, and at that Term, on December 7, 1896, a motion was presented to dismiss that appeal on the alleged ground, that the record disclosed no questions which, under the act of March 3, 1891, would give that Court jurisdiction to entertain the

appeal. Under the provision of the fourth clause of Rule 6, the motion to dismiss the appeal was submitted on printed arguments, and the subject of the motion was ordered postponed until the hearing of the case on the merits.

IV.—Subsequently the petitioner presented to the Circuit Court of Appeals for the Third Circuit the following motion:

"And now, September 14, 1897, comes the appellant, Pullman's Palace Car Company, and moves that, in accordance with the authority conferred by the sixth section of the Act of Congress of March 3, 1891, being the Act to establish Circuit Courts of Appeals, this Court will certify to the Supreme Court of the United States for its instruction thereon the question of law, namely: The question whether this Court under this appeal has jurisdiction according to the provisions of the Act of Congress aforesaid to hear and determine this cause."

This motion was heard on October 1, 1897, and refused. The opinion of the Court filed upon that hearing and the entry of that order is as follows:

PULLMAN'S PALACE CAR COMPANY
vs.
CENTRAL TRANSPORTATION COMPANY.
October 1, 1897.

This is a motion asking us to certify to the Supreme Court the question whether this Court has jurisdiction to hear and determine the cause.

Upon a former occasion we felt constrained to refrain from passing on the merits of this case while it was pending on an appeal to that Court, nor do we now perceive that any useful result would be promoted by granting the present motion. Until the Supreme Court shall have determined the question there

pending on the appeal and on the motion to dismiss this appeal this Court thinks it would not be proper to deal with the case on its merits, and it may be that the action of the Supreme Court may relieve this Court from any further duty in the case.

The motion is refused.

GEO. SHIRAS,
As. J. S. Ct.

V.—Your petitioner further shows that the jurisdiction of the Circuit Court in the original cause was based on the citizenship of the parties, the petitioner being a citizen and resident of the State of Illinois, and the Central Transportation Company being a citizen and resident of the State of Pennsylvania, so that the cause so far as it is governed by the jurisdiction of the original bill is (unless it comes within the provisions of the Fifth Section of the law which gives direct appeal to this Court), one in which the judgment of the Circuit Court of Appeals would be final; and is one of a class of cases in which, in case of judgment of the Court of Appeals in favor of its own jurisdiction, the Act of Congress appears to confer no right on either party to review of such a judgment by appeal; and there is apparently no provision of law for review, except the provisions of Section 6 of the Act of Congress aforesaid by which this Court may, by *certiorari* or otherwise, require cases to be certified to it for its review and determination. It further represents that the existence of the two appeals above mentioned constrains a decision by one or the other court of the questions of jurisdiction involved; that the general importance, as well as the importance to the parties of the questions presented, cannot be over-estimated, and that they are questions as to which it is of supreme importance that uniformity of decision should be established.

VI.—A certified copy of the entire record of the case in the Circuit Court of Appeals is herewith furnished in conformity with the rule of this court.

VII.—Wherefore, your petitioner respectfully prays that a writ of *certiorari* may be issued out of and under the seal of this Court, directed to the United States Circuit Court of Appeals, for the Third Circuit, commanding the said court to certify and send to this court, on a day certain to be therein designated, a full and complete transcript of the record and all proceedings of the said Circuit Court of Appeals in the said case therein entitled "Pullman's Palace Car Company, Appellant, *vs.* Central Transportation Company," to the end that the said case may be reviewed and determined by this Court, as provided in section 6 of the Act of Congress entitled "An act to establish circuit courts of appeals and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes," approved March 3, 1891, or that your petitioner may have such other or further relief or remedy in the premises as to this Court may seem appropriate and in conformity with the said act.

And your petitioner will ever pray, &c.

PULLMAN'S PALACE CAR COMPANY,
By A. H. WINTERSTEEN,
EDWARD S. ISHAM and
JOSEPH H. CHOATE,
Its Attorneys.

No. 463. 141.

Brief of Wintersteen, Lincoln & Choate for

Filed Dec. 2, 1896.

United States Supreme Court.

DEC 2 1896

No. 463. October Term, 1896.

PULLMAN'S PALACE CAR COMPANY,

Appellant,

vs.

CENTRAL TRANSPORTATION COMPANY,

Appellee.

Appeal from the Circuit Court of the United States for the Eastern District of Pennsylvania.

BRIEF OF EDWARD S. ISHAM FOR APPELLANT IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS THE APPEAL.

INDEX.

Statement of the Case..... Page 1
The Questions Presented..... " 13
Argument..... " 17

A. H. WINTERSTEEN,
ROBERT T. LINCOLN,
EDWARD S. ISHAM,
JOSEPH H. CHOATE,
Of Counsel for Appellant.

The Evening Post Job Printing House, New York.

Supreme Court of the United States.

OCTOBER TERM, 1896.

PULLMAN'S PALACE CAR COMPANY,
Appellant,

vs.

CENTRAL TRANSPORTATION COMPANY,
Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

BRIEF OF EDWARD S. ISHAM FOR APPELLANT IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS THE APPEAL.

Statement.

This appeal is taken in conformity, it is thought, to the provisions of the Act of Congress of March 3, 1891. By the fifth section of that act appellate jurisdiction is given exclusively to the Supreme Court,

> "In any case that *involves the construction or application* of the Constitution of the United States.
>
> "In any case in which the constitution or law of a State is *claimed* to be in contravention of the Constitution of the United States."

If either of these conditions exist, this Court has exclusive appellate jurisdiction to review and determine not only the questions involved therein, but equally all other questions and issues contained in the Record.

The present motion to dismiss this appeal is founded on the assertion that none of these conditions of appeal to this Court are presented by the Record. This is the matter, therefore, which we have to examine.

A recital of the issues presented, without argument or discussion of them but sufficient to show in what relation these questions arise, seems unavoidable. Counsel for appellee have adopted and submit on this motion as their statement of the circumstances and issues of the case below the report of that case, which is contained in 72 Fed. Rep., page 211. We do not accept the presentment made by this report, by whomsoever it may have been prepared, either of the circumstances or issues of this case, or of the positions of the present appellant in the court below. The interest involved is too great and the issues too grave to make any uncertainty permissible, and we prefer such reference to the Record itself as will show the actual issues in a way not open to objection or to criticism.

This appeal is taken from what is purely a money judgment rendered on a so-called cross bill.* Ac-

* The following is the "decree" (Record, p. 1197):

U. S. C. C., E. D. of Pa., October Sess., 1886.

PULLMAN'S PALACE CAR COMPANY vs. CENTRAL TRANSPORTATION COMPANY.	No. 44.
CENTRAL TRANSPORTATION COMPANY vs. PULLMAN'S PALACE CAR COMPANY.	Cross-Bill.

And now, January 24th, 1896, the above cause having been heard upon exceptions to the report of Theodore M. Etting, Esq., Master, and having been argued by counsel for the respective parties and considered by the Court, it is ordered and decreed in conformity with the opinions of the Court filed:

FIRST.—That both the exceptions filed by the Central Transportation Company and the exceptions filed by Pullman's Palace Car Company to the Master's report be dismissed.

SECOND.—That Pullman's Palace Car Company pay to the Central Transportation Company the sum of four million two hundred and thirty-five thousand and forty-four dollars.

THIRD.—That Pullman's Palace Car Company pay the costs of this cause incurred on account of the cross-bill.

cording to the view presented by appellee, the original bill would seem to have been filed primarily to procure a decree annulling a contract of lease, then subsisting between the parties, on the ground of its illegality. This was the lease which received the consideration of this Court in the case of *Central Transportation Company* v. *Pullman's Palace Car Company*, 139 U. S., 24, and was the subject matter of its judgment in that case. The original bill in this case is shown in the Record at page 1. It was filed January 25, 1887; but before it was filed a judgment at law had been rendered against the complainant, the Pullman Company, for an installment of rent accruing under that lease. This judgment had been appealed from and the bill was filed pending that appeal. The judgment was reversed by this Court in the case of *Pullman's Palace Car Company* v. *Central Transp. Co.*, 139 U. S., 62. Other successive actions at law for subsequent quarterly installments of rent were also pending, and among them the one that afterwards came before this Court in the case first above cited, viz.: *Central, &c., Co.* v. *Pullman, &c., Co.*, 139 U. S., 24, in which the lease was held to be illegal and void. Now, reference to this original bill will show that in its primary and practically single purpose it sought the aid of the Court in carrying into effect, and in affirmatively executing certain provisions of the lease itself. They were those provisions which were contained in the eighth section of the lease which was before this Court, and quoted and construed in the case above cited of the *Pullman, &c., Co.* v. *Central Transp. Co.*, 139 U. S., 62. That Section "Eighth," under specified circumstances, authorized a modification or termination of the lease itself, and in case of such termination specific terms of the lease provided for and governed the restoration of the demised property.

Such restoration, conforming strictly to the terms of the lease, had become impossible, and the bill, alleging an election to terminate the lease declared

in June, 1886 (Rec., p. 35), prayed the aid of the Court in making a substantial instead of a strict performance of its requirements.

In that connection the bill also averred that the complainant had in January, 1885, formed and declared its purpose to *then* terminate the lease, but had been dissuaded therefrom and induced to accept the alternative provided in Section "eighth," of paying the defendant an equitable share of the revenues that might be realized under the lease; that this was then agreed to by the defendant, and the agreement afterward repudiated. The bill prayed, therefore, that the Court *would decree whether the election* made in January, 1885, to pay a share of the net revenues instead of terminating said lease, *was not conclusive and binding upon* both parties thereto. If *not*, it prayed that the act of termination declared in June, 1886, *might relate back* and take effect in January, 1885; and it prayed injunction against the further prosecution of suits at law for rental accruing after January, 1885.

In an entirely subordinate and substantially incidental way the bill *submitted* to the Court for consideration a question whether the lease itself was valid. It contained *no prayer* that it should be held void, and its attitude upon that subject was absolutely passive. It stated the advice of counsel which complainant had received, submitted it to the Court, and asked that it would consider and decree whether the contract was enforceable by either party. The clauses upon that subject are found in the Record, at page 20. This is the part of the bill which, for the sake of supporting the cross-bill, was suddenly, and after the lease had been held void by the Supreme Court, magnified into proportions unheard of before.

The bill *did not* pray that the lease should be declared void for illegality. It *did not repudiate or disaffirm it*, or *refuse on that ground to pay rental* or otherwise perform its terms. On the contrary,

the prayer of the bill was for execution of provisions of the lease itself.

The answer of the Central Transportation Company of April 15, 1887 (Rec., p. 55), denied the rights asserted by the complainant in the original bill concerning the termination of the lease; insisted that all the issues between the parties were "such as were properly determinable only on the common law side" of the Court (Rec., p. 63), and averred there was no such difficulty in the way of performance by complainant of the conditions of their right to annul the lease as justified their application to a court of equity for relief; and said "the questions involved are questions of fact peculiarly determinable by jury" (Rec., p. 65). It emphatically *repudiated and rejected all tenders and offers of compensation proffered by the bill* (Rec., 63, 65, 537, 555), and said, "under the advice of counsel," that the lease was legal "and that if it were not legal "such illegality did not justify an application by "the complainants for equitable relief." In *performance of the terms of this contract of lease*, and for its purposes, certain property had been transferred and delivered by the Central Transportation Company to the lessee. It was a transfer of *all* the property and of all the resources it possessed (*Rec.*, p. 536), for the conduct of its business. This property consisted of the railway cars and equipment then owned and in use by the Central Transportation Company, and of a sum of money amounting to about seventeen thousand ($17,000) dollars. There were also assigned certain *contracts* with railway companies, of varying duration, under which the Central Company was operating its sleeping-car service on their lines, and certain patent rights.

While this bill was pending and the cause proceeding regularly, the judgment of this Court was announced in the case of *Central Transp. Co.* v. *Pullman Car Co.*, 139 U. S., 24. In that case the lease itself, the affirmative enforcement of which,

by the aid of the Court was sought by the original bill in this cause, was held to be illegal and void. The reasons for which the Supreme Court held it to be illegal, and consequently void, were three:

FIRST.—That it was technically *ultra vires* of the Central Transportation Company, that is, it was beyond the powers conferred by the Legislature upon that company.

SECOND.—That it was a violation of public policy by the Central Transportation Company in that "it involved an abandonment of its duty to the "public," for it *parted "with all its means of car-"rying on the business and performing the duty for "which it had been chartered,"* and undertook to transfer for a period "nearly co-extensive with the "duration of its own corporate existence the whole "conduct of its business and the performance of all "its public duties to another corporation."

THIRD.—That the contract, because it contained a specific covenant on the part of a public corporation, the Central Transportation Company, not to engage in the business, or to perform at all anywhere the duties to the public for which it was incorporated, during the continuance of the lease, was void, "because in unreasonable restraint of "trade, and therefore contrary to public policy."

The contract of lease, therefore, was held illegal and void, not only because technically *ultra vires*, but also because in *two* distinct particulars in *violation of public policy* and of public duty.

The record shows this judgment of this Court reviewed and a contrary conclusion reached by BUTLER, District Judge, sitting in the Circuit Court.*

---

* We give, side by side for easier comparison, the language of this Court in its judgment on the construction of this lease and the language of the opinion stating the subsequent decision of the Court below:

It is not easy to understand how the District Judge found this question open at all for his review. This Court had already considered and construed this contract of lease, and its conclusion is quite at variance with the subsequent decision of

---

Extract from opinion of Mr. Justice Gray, 139 U. S., p. 51:

"The evident *purpose* of the Legislature, in passing the statute of 1870, was to enable the plaintiff *the better* to perform its duties to the public, by prolonging its existence, doubling its capital and confirming, if not enlarging, its powers. An intention that it should immediately abdicate those powers and cease to perform those duties, is so inconsistent with that purpose, that it cannot be implied, without much clearer expressions of the legislative will looking towards that end, than are to be found in this statute.

"In any view, it would be inconsistent alike with the main purpose of the statute, and with the uniform course of decision in this Court, to construe these words as authorizing the plaintiff to deprive itself, either absolutely or for a long period of time, of the right to exercise the franchise granted to it by the Legislature for the accommodation of the public.

"By the contract between these parties, as expressed in the indenture sued on, are transferred all cars already constructed, all existing contracts with railroad companies for running cars, all existing patent rights under which other cars might be constructed, and all other personal property, moneys, credits and rights of action of the plaintiff. But *after* the cars and the railroad contracts may have ceased to exist, and *after* all those

Extract from opinion of Butler, District Judge, filed December 18th, 1894, Rec., p. 1128:

"The Pullman Company's answer to the cross-bill, denying responsibility for the property received, raises the principal question before us. The denial rests on the fact that the property was transferred under an unlawful contract.

"The following propositions respecting such contracts may be affirmed with confidence: First, that the Courts will not enforce them; second, that the Courts will not interfere for the relief of either party when they have been executed; third, that the Courts will interfere to compel restitution of property received under such contract by one who repudiates it, except when the contract involves moral turpitude. These propositions find ample support from text writers and the courts. The third only is involved here, and, omitting what is embraced by the exception, it is indisputable. What constitutes "moral turpitude" or what will be held such is not entirely clear. A contract to promote crime certainly involves it. A contract to promote public wrong, short of crime, may or may not involve it. If parties *intend* such wrong, *as where they conspire against* the public interests, *by agreeing to violate the law or some rule of public policy*, the act doubtless *involves moral turpitude*. When no wrong is contemplated, but is unintentionally

the Court below, that the "question of interpretation" "was a close and difficult one;" that the "Statute of 1870," which enlarged the capital and extended the corporate life of the company, "*was* "*supposed to confer full authority*" to "imme-

patent rights must have expired, the indenture is *still* to continue in force for the full term of ninety-nine years, unless sooner terminated as therein provided. In addition to all this, the plaintiff *covenants*, in the most express and positive terms, never to 'engage in the business of manufacturing, using or hiring sleeping cars' while the indenture remains in force. In short, the plaintiff not only parts with all its means of carrying on the business, and of performing the duty, for which it had been chartered, of transporting passengers and making and letting cars to transport them in; but it undertakes to transfer, for ninety-nine years, nearly co-extensive with the duration of its own corporate existence, the whole conduct of its business, and the performance of all its public duties, to another corporation; and to continue in existence, during that period, for no other purpose than that of receiving, from time to time, from the other corporation, the stipulated rent or compensation, and of making dividends out of the moneys so received.

"Considering the long term of the indenture, the perishable nature of the property transferred, the large sums to be paid quarterly by the defendant by way of compensation, its assumption of the plaintiff's debts, and the frank *avowal* in the indenture itself of the *intention* of the two corporations to prevent competition and to create a monopoly, there can be no doubt committed, through error of judgment, it is otherwise. "Turpitude" is defined by Webster to be "inherent baseness or vileness of principle, or acting, shameful wickedness." No unintentional wrong or improper act innocent in purpose can involve it. When individuals or corporations enter into contract in excess of authority or violate some rule of law unintentionally, the act does not involve moral wrong, much less turpitude. The subject has been much before the courts, and, while loose and misleading expressions appear occasionally, the decisions are all reconcilable with this statement. * * * It seems to be true that the distinction between *malum prohibitum* and *malum in se* (which never had the support of just reason), has disappeared. This, however, is unimportant. The distinction never had any legitimate bearing on the question.

Thus it follows that unless the execution of the contract between the Central Transportation and the Pullman Palace Car Company involves moral turpitude, as before described, the former may recover back the property parted with under it. That it does not involve such turpitude seems clear. *Neither party contemplated any* wrong. Both believed the contract to be lawful. The Statute of 1870 *was supposed to confer full authority to make it.* The State had, unquestionably, power to grant the authority, and the evidence shows that the statute was

diately abdicate" its "powers," and the discharge of its public functions, and "to covenant in the "most express and positive terms never to en- "gage" in its corporate business while the lease should be in force; and that "*all that can justly* "*be said*, therefore, is that the parties miscon- "strued their authority, and that the lease is, "consequently, *ultra vires*." In the adjudication of this Court, the lease was held unlawful not merely because unauthorized, and so technically *ultra vires*, but also specifically *because* it was an

---

that *the chief consideration* for the sums to be paid by the defendant was the plaintiff's *covenant* not to engage in the business of manufacturing, using or hiring sleeping cars; and that the *real purpose* of the transaction was, *under the guise* of a lease of personal property, to transfer to the defendant nearly the whole corporate franchise of the plaintiff, and to continue the plaintiff's existence for the *single purpose of receiving compensation for not performing its duties.*

"The necessary conclusion from these premises is that the contract sued on was unlawful and void, *because* it was beyond the powers conferred upon the plaintiff by the Legislature, *and because* it involved an abandonment by the plaintiff of its duty to the public.

"There is a strong ground also for holding that the contract between the parties is void because in unreasonable restraint of trade, and therefore contrary to public policy. * * * A contract by which a corporation, chartered to perform the duties of a common carrier, or any other duties to the public, agrees that it will not perform those duties at all, anywhere, for ninety-nine years, *is clearly unreasonable and void.*"

procured for the express purpose of granting it. The question whether the statute did or did not grant it was a close and difficult one. The learned counsel of the parties and the Court disagreed on the subject. It was a question of interpretation. In the Court's view the lease was *ultra vires* and void; in the counsel's it was authorized and lawful. True, it violated a rule of public policy, but this was *only because the Court construed the statute more narrowly* than the legal advisers of the parties had done. The Legislature is the judge of what the pub, lic interests require in the premises, and if it had authorized the lease, as the parties honestly believed it had, no question of public policy could have arisen. *All* that *can justly* be said, therefore, is that the parties *misconstrued their authority*, and that the lease is consequently *ultra vires*. * * * The property must therefore be returned or paid for. The former is impossible. The property has substantially disappeared. It has become incorporated with the business and property of the plaintiff, and cannot be separated. Compensation must therefore be made,

affirmative violation of public policy in that it involved an abandonment of its public duties by the lessor, and because its specific covenant not to perform those duties at all, anywhere, for ninety-nine years, was "contrary to public policy" and "clearly unreasonable and void." It is, however, *upon the difference* between the construction of the contract by this Court and that of the Court below, that the decree is founded from which this appeal is taken. The only questions relate to the effect to be given to the judgment of this Court, and to whether it may be neutralized and evaded.

It was in pursuance of the provisions of the lease thus construed by this Court that the property now in question was transferred. That transfer became part of the *executed* terms of the lease. The lease stipulated for the transfer of all the property and resources of the Central Transportation Company and the abandonment of its business, and it is admitted in the Record (p. 536, 554), that such transfer and abandonment were made in full performance and execution of the agreement of the lease to that effect. Although the rule would seem to be settled in the Courts of the United States (*C. H. & D. R. Co.* v. *McKeen*, 64 Fed., Rep. 46, that the executed dealings under a contract, unlawful and void for the reasons that rendered *this act of transfer*, as well as the *contract* to make it, unlawful, will not be interferred with by the courts, this cross-bill was brought solely to recover the possession of the property transferred, or its value, and damages for its detention and for the *loss* of the "abdicated" and abandoned business.

At that stage, plainly, nothing whatever remained of the functions of the original bill. It had no longer any office whatever to perform, and *no one* was seeking any relief under it whatever. All its proffers of restoration and compensation had been rejected by the answer, which had been framed in terms studiously arrogant and injurious. Its only element of equitable nature, namely, its appeal for

aid of the Court of Equity in terminating the lease with relation back to January, 1885, and in making a restoration of property to suit its terms, was extinguished by the judgment of this Court, that the lease itself was unlawful and void *ab initio*. If we concede the claim of appellee that the bill was filed to set aside the lease for illegality, then the judgment of this Court had left only that part of the bill remaining, but clearly such a bill could not be entertained by the Court, for the case presented was *identical* with that of the *St. Louis, Vandalia, &c., R. R. Co.* v. *Terre Haute, &c., R. R. Co.*, 145 U. S., 393, in which the bill was dismissed upon demurrer. So the appellee claimed in its answer to the original bill. (Rec., p. 65.) The original bill, therefore, had become at that stage empty altogether. *As it then stood* there was *nothing to do* but to dismiss it. The complainant therefore, on the *sixth* day of April, 1891, moved for leave to dismiss its bill at the complainant's cost, and afterwards, on the *twenty-fifth* day of April, 1891, this motion, after hearing, was taken under advisement by the Court. Thereupon on that twenty-fifth day of April, 1891, "the defendants moved the "Court for leave to file a cross-bill, in which they "would avail themselves of the tenders of relief "made by complainants in their bill." As has been already stated, all tenders or proffers made by the bill had been at the outset summarily rejected, and *meanwhile* the complainant had itself abandoned its bill and moved for its dismissal. Subsequently, on the tenth day of December, 1891, the Court again by its order took under further consideration the complainants' motion for leave to dismiss the bill and the respondent's motion for leave to file a cross-bill, and on the fourteenth day of December, 1891, gave leave to file the cross-bill and refused the complainant's motion to dismiss its bill. (Rec., 551-3.)

Accordingly, since leave to dismiss the original bill was refused, the entire litigation has proceeded upon the so-called cross-bill and *upon that only*. The

whole subject matter of the existing controversy was introduced by the cross-bill, and the only issues which have been litigated and discussed are those presented by it. Not a step in the original cause, or connected with it, has been taken since the motion to dismiss. The cross-bill was grounded upon nothing in the original cause. It did not purport to accept or otherwise to "avail" itself, as the motion for leave to file it stated that it would do, of any "tenders" of the bill which had been originally rejected and never renewed. The claim of the cross-bill was founded upon an *implied obligation* to return the property, which it stated had been delivered "in "pursuance of the agreement" (Rec., p. 554) of lease which had been found unlawful and void, so that *the purpose had failed for which the delivery was made.* It relied upon an alleged obligation to return, not arising from any contract or covenant known in any way to the original cause, but arising by *implication of law* merely from the admittedly *unlawful act* of transfer of property belonging to the cross-complainant *for the unlawful purposes* of the lease. But such an obligation arose, if at all, outside of and apart from the original cause. It was one that by its nature could not arise at all until *after* the judgment of this Court, by holding the lease *and* the transfer *equally* unlawful, had extinguished the functions of the original bill and the *raison d'être* of the cause. The so-called cross-bill therefore constitutes purely and simply an independent suit for the enforcement of a legal title to specific property and to recover its possession, or its value, and damages, among other things, for its detention.

The questions presented.

By Section 5 of the Act of 1891, appeals may be taken directly to this Court from the Circuit Courts "in any case that involves the construction or ap- "plication of the Constitution of the United States, "and in any case in which the constitution or law "of a State is claimed to be in contravention of the "Constitution of the United States." In the proceedings and on the hearing below, two questions arose which appeared to involve the application, and one of them perhaps the construction, of the Constitution of the United States. One of these questions included also a *claim* that a statute of the State of Pennsylvania was in contravention of the Constitution of t he United States and that it was held by the Court not to be so, and that such holding was a *denial* of a Constitutional right claimed by the appellant.

The first question presented itself in this form: The appellant, as has been stated, had abandoned its original bill and moved its dismissal, but this application was *refused;* and, on the contrary, the Court retained the bi l, abandoned upon the record, and compulsorily held the complainant in court for the sole and declared purpose of holding on to a jurisdiction of the parties in order to give opportunity to the defendant to pursue by a cross-bill, and in a court of equity, a purely legal claim of right. After all its objections had been overruled, the complainant, by its answer to the cross-bill, took the ground that the alleged title asserted by the cross-bill to the property was a strictly *legal* title and was the proper subject matter of an action at law, if any action for the recovery of property or compensation therefor in damages existed; and that under the Constitution of the United States the Court of Equity had no right to take cognizance thereof. At every stage of the cause appellant has insisted upon this right, and that the question being

one of legal title and legal damages it came within the constitutional guarantee of trial by jury, and this claim is presented by the seventh and eighth assignments of error, which are as follows:

> "7. The Court erred in holding that the subject matter of the said cross bill being matter of a purely legal nature and of the enforcement of a purely legal right, was not excluded from the cognizance of equity by force of the seventh amendment to the Constitution of the United States.
>
> "8. The Court erred in not holding that the subject matter of said cross-bill was the proper subject matter of action at law only, and of trial at law and by jury, both under the provisions of the seventh amendment of the Constitution of the United States and of Section 723 of the Revised Statutes of the United States."

Notwithstanding this objection, the Court proceeded to try the cause, to adjudge the title to the property, to assess its value and to enter a money decree for damages, in disregard of the constitutional right invoked by the appellant.

Another question arose on the trial below which seems clearly to bring the case within the conditions of direct appeal to this Court. Under the decision of the Court below, already quoted from (pp. 7-9, *ante*) (Rec., pp. 1126-1133), the value in 1870 of the property of the appellee which was then transferred to the appellant "in pursuance of the agreement" contained in the lease, was directed to be inquired into and ascertained in order to fix thereby the amount of compensation or damages therefor to be adjudged against the appellant. There were among these properties certain operating contracts with railways which were in terms limited to run "during the "continuance of the incorporation of the party of "the first part," the appellee. When these contracts were made the Central Transportation Company was incorporated under a *General Law* of

Pennsylvania (Rec., p. 531) for a specific term which was to expire December 30, 1882. In 1870, some years after the making of these contracts and before the making of the lease, the Central Transportation Company procured from the Legislature of Pennsylvania a *Special Act* which gave it, among other things, an additional period of ninety-nine years of corporate life. On the trial below it was claimed against the appellant that this statute of 1870 had the legal effect of extending the term and the force of these contracts for the additional period of ninety-nine years, and that in appraising their value in 1870 they were to be charged against appellant, not as contracts expiring in 1882 and having twelve years to run, but as contracts having one hundred eleven years to run, obligatory upon the several railways for that period, and of corresponding value. No assent of the railroads to this prolongation of these contracts was pretended; but the Master held, and the Court affirmed his conclusion, that such was the legal operation and effect of this Special Act of the Legislature of Pennsylvania. This conclusion of the Court, that these contracts were in 1885 still existing and valid contracts for the prolonged term, although except for this effect of the Statute they would have expired in 1882, became the basis of the decree from which this appeal is taken.

All this was made the subject of exception to the Master's report (Rec., p. 1191), and is the subject matter of a separate assignment of error which is as follows (Rec., p. 1202):

> "23. The Court erred in holding that the finding of the Master was correct; that certain railway contracts belonging to the Central Transportation Company and which were originally made to continue 'during the continuance of incorporation' of the Central Transportation Company were continued in force and extended for the period of 99 years by force of the Act of the Legislature of the State of Pennsylvania of the 9th of Feb

> ruary, A. D., 1870, by which the said transportation company was given a corporate life for a period of 99 years from the time of the expiration of its then existing charter; and the Court erred in not holding that such effect of the said Legislative act of the 9th of February, 1870, was in conflict with and would be forbidden by Article 1, Section 10, of the Constitution of the United States, which prohibits on the part of the States any enactment impairing the obligation of contracts."

Appellant's counsel considered that in this question the case involved the application and *also* the construction of the Constitution of the United States.

They are of opinion, also, that it presents within the provision of the fifth section of the Act of 1891 a case in which the law of a State was "*claimed* to be in contravention of the Constitution of the United States." Such was certainly the *claim* of the appellant, and the claim was denied by the legal effect which, contrary to such claim and in the teeth of the constitutional prohibition, was given by the Court to the Statute of Pennsylvania. In the opinion of appellant's counsel, therefore, there is given in this cause by the fifth section of the Act of Congress of 1891 direct appeal to this Court, because, *first*, there is presented under the seventh amendment a case that involves the *application* of the Constitution of the United States; *second*, under that clause which prohibits on the part of the States any enactment impairing the obligation of contracts there is presented a case that involves the *construction* and the *application* of the Constitution of the United States; and *third*, that under the same clause there is presented here a case in which a law of a State is *claimed* to be in contravention of the Constitution of the United States.

Argument.

1. *Taking cognizance in equity of the issues presented by the cross bill was itself a denial of the constitutional right guaranteed by the Seventh Amendment; and the right being thereby denied, the case involves the application of the Constitution.*

The Seventh Amendment to the Constitution declares that, "In suits at common law, where the "value in controversy shall exceed $20, the right of "trial by jury shall be preserved;" and in construing this clause the Supreme Court of the United States, in *Parsons* v. *Bedford*, 3 Pet., 447, held that it meant, "not merely *suits*, which the "common law recognized among its old and settled "proceedings, but suits in which *legal rights* were "to be ascertained and determined, in contradis-"tinction to those where equitable rights alone "were recognized, and equitable remedies were ad-"ministered." The Court further said: "In a just "sense, the amendment may well be construed to "embrace *all suits* which are not of equity and "admiralty jurisdiction, *whatever may be the pecu-"liar form* which they may assume to *settle legal "rights*" (*Bains* v. *The James & Catherine*, Baldw., 544. This Court again, in *Lewis* v. *Cox*, 23 Wall., 466, said, it is the universal practice of courts of equity to dismiss the bill if it *be grounded on a merely legal right*. In such case the adverse party has a *constitutional right* to trial by jury.

In the present case a cross-bill was filed founded directly on the *assertion of the legal title* to certain specific property. It demanded the *recovery of the property* or compensation for it in damages; and an assessment and recovery of money damages for the loss of business, which appellant had covenanted to abandon and had abandoned (Rec., p. 536).

To this objection was made that the case was one of the enforcement of a *legal title*, and was in the

nature of a suit in replevin or in trover "under the guise of a suit in equity" (*The Sultan* v. *The Providence Tool Co.*, 23 Fed., 572), and was the proper subject matter of an action at law; and that it was excluded from the cognizance of equity *by the Constitution* of the United States.

Is not such a case one that involves the application of the Constitution of the United States? If not we are at a loss to see how such a case can arise, or how the Constitution upon that subject can ever be given any operation.

Counsel for appellee, in their argument on this motion (p. 24), say:

> "The fallacy of the appellant's contention lies in the assumption that whenever the result of a decision is to deprive a party of an opportunity to try a question before a jury, a constitutional question is necessarily involved. There are many decisions which do not involve constitutional questions, but which indirectly take away the right of trial by jury. Whenever at common law the court sustains a demurrer to the declaration or complaint or directs a verdict, and whenever in equity the court overrules a demurrer based on want of equity or the existence of an adequate remedy at law, the result is the taking away of the opportunity to try before a jury; but such decisions are in no proper sense decisions of constitutional questions. The Seventh Amendment to the Constitution of the United States merely 'preserves' the 'right of trial by jury in suits at common law,' and if under the application of the principles of common law or of equity as they existed at the time of the adoption of the Constitution, the right to a jury trial does not exist, the constitutional provision has no application."

With due respect we submit that all this has *nothing to do with* the matter which is in hand. No suggestion on our part is involved that in instances where, according to the course or authority of the common law, the right of trial by jury *did*

not exist at the time of the adoption of the Constitution, the provisions of the seventh amendment should be now applied. It was according to the course and authority of the common law that a demurrer might be sustained, holding as *matter of law* that no cause of action was presented by the declaration; and so a court might direct a verdict for the defendant when satisfied upon the evidence that as *matter of law* the plaintiff was not entitled to recover, and when it could see that it would be constrained to set aside a verdict in his favor. But no one will contend that *such legal rights* as are asserted by this cross-bill were not at the time of the adoption of the Constitution, and always, entitled at common law to the decision of a jury. The clause was already in force in the Third Article of the Constitution which established the fundamental distinction between law and equity in the judicature of the United States, and so were the provisions of the 16th Section of the Judiciary Act of 1789, which has become Section 723 of the Revised Statutes; but the seventh amendment owed its existence to the general apprehension notwithstanding those clauses that some supremacy of prerogative might come about which would impair the right of trial by jury. It is the express declaration of this Court that "the "want of an *express* provision securing the right "of trial by jury in civil cases led to the adoption "of the amendment" (*Parsons* v. *Bedford*, 3 Pet., 447). The provisions of the 16th Section of the Judiciary Act have been held to be only declaratory of the rule which would prevail without them; but it can hardly be pretended that where the Constitution has supervened and established a right, the application of the Constitution fails to be involved because the same right was already prescribed by an Act of Congress, or by a precedent rule of the common law. Such a suggestion concerning the source of dominant authority is confronted by the question, what is the "supreme law of the land?" Whatever the

case may be when the Constitution is silent, there will be no doubt that when the Constitution does deal expressly with any subject, it is the supreme source of authority upon every question of right or obligation to which its provisions relate; for this is but a minor application of the rule, "When the ALMIGHTY speaks let the kings of the *earth* keep silence."

Nor, referring to the suggestions of counsel in the argument above quoted, is it necessary at all for us to claim that a question under the Constitution arises in every case in which a bill is held to be without equity. This cannot have been the intent of Congress in the Act of 1891. But we say without hesitation, what this Court has declared, that, whenever a case is presented, in any form of proceeding, for the trial of a right distinctly legal in its nature, and *which at the time of the adoption of the Constitution was triable by jury at common law*, the seventh amendment *guarantees* the right to that mode of trial; and the application of the Constitution is involved whenever that right is disregarded. If a suit is brought in equity upon a cause of action of purely legal nature, for the determination of an issue which, by the common law existing when the Constitution was adopted, would be triable only by a jury, as, for example, a suit to recover possession of a horse, or of land; a suit to recover a money debt claimed to be due on a promissory note or other contract; a suit to ascertain and recover money damages for injury to an established business, or for conversion of specific property; or a suit by a simple contract creditor, one whose debt has not yet been ascertained by judgment, to ascertain and establish that debt preliminary to a claim of equitable relief in the same suit; in such cases it is nothing to the case to say that the Judge decided merely "under the general principles of equity jurisprudence" that courts of equity could take cognizance of those issues and that it was an ordinary error of law like any other. His decision in *such case* is *also* a

denial of a constitutional right. If a judge in equity will force a defendant to submit to the trial by him of an action for damages for trespass, and to what he may call a decree therein for damages, then he has gone beyond the limits of ordinary error. He has acted upon a subject matter *not within the general powers* of his court. He has denied a common law right which is guaranteed by the Constitution. If in the particular case the right of trial by jury existed at common law, it has the *guaranty of the Constitution.* It is doubtless *error* in an equity court to proceed in disregard of that, but that is not all. If the *right is within the guaranty* of the Constitution, the *case involves the application of the Constitution*, if the guaranty is invoked by a party, and even if it is not; for the question may be raised by the Court *sua sponte.* If the constitutional guaranty is denied, the party becomes thereby entitled to the judgment of this Court; and this right is not to be evaded and defeated by the illusory suggestion that there has occurred *merely* a decision "under the general principles of equity jurisprudence that the respondent was entitled to affirmative relief by cross-bill." The judicial action of the equity courts is, upon that subject, subordinate to the constitutional guaranty and involves its application. The rule and the line of discrimination are accurately declared by Mr. Justice MATTHEWS, in *Root* v. *Railway Co.*, 105 U. S., 206, where he said:

> "Indeed, it is the *settled* doctrine of this Court that this *distinction of jurisdiction*, between law and equity, *is constitutional to the extent* to which the seventh amendment forbids any infringement of the right of trial by jury *as fixed by the common law.*"

That is to say, it is constitutional *to the extent* to which issues, *legal* in their nature, were at common law, when the Constitution was adopted, triable by jury. We append several citations from familiar

cases simply because they serve to illustrate the uniformity with which this Court has, throughout its history, maintained the line of discrimination indicated, and show how firmly it has established the "settled doctrine" stated by Mr. Justice MATTHEWS that the right in question here "*is* constitutional *to the extent* to which the seventh amendment forbids any infringement of the right of "trial by jury *as fixed by the common law.*" The matter is well stated in *Gordan* v. *Jackson*, 72 Fed., 87. There the Circuit Court said:

> "These suits *are, in effect, an effort*, on part of an alleged owner out of possession, *to recover from a party in possession lands alleged to be improperly withheld.* That such a right was, at the *time of the adoption of the Constitution* and statute cited above, cognizable at law, is a proposition that cannot be controverted. * * * If, then, the complainants are permitted to maintain this suit, the defendants *will be denied the right* to a trial by jury *guaranteed by the Constitution*, and the statute, which forbids a suit in equity where a plain, adequate and complete remedy may be had at law, will be disregarded. *The fact that this case would have been cognizable at law when the Constitution was adopted brings it within the guaranty of a right to trial by jury.*"

In *Hipp* v. *Babbin*, 19 How., 277, this Court said:

> "The bill in this cause is, in substance and legal effect, *an ejectment* bill. The *title appears by the bill to be merely legal.* * * * And the result of the argument is, that whenever a court of law *is competent* to take cognizance of a right, and *has power* to proceed to a judgment, which affords a plain, adequate and complete remedy, without the aid of a court of equity, the plaintiff must proceed at law, because the defendant has a *constitutional* right to a trial by jury."

In *Kilian* v. *Ebbinghaus*, 110 U. S., 572, this Court said:

> "The *fatal objection* to the suit is, that it is in fact an attempt by the party *claiming the legal* title to *use a bill in equity* in the nature of a bill of interpleader *as an action of ejectment. The record makes this apparent*, * * * and this objection to the jurisdiction may be enforced by the Court *sua sponte*, though not raised by the pleadings nor suggested by counsel."

To the same effect is the case of *Parker* v. *Winnepiseogee, &c. Co.*, 2 Black, 550.

In *Thompson* v. *Railroad Companies*, 6 Wall., 137, this Court said:

> "The suit brought in the State court *was nothing but an ordinary action at law.* When it was removed to the Federal court, a bill in equity (alleging the same cause of complaint) was substituted by leave of the Court, for the petition originally filed in the State court, and the suit progressed as a cause in chancery. Thus, an action at law, which *sought solely to recover damages for a breach of contract*, was transmuted into a suit in equity, and the defendant *deprived of the constitutional privilege* of trial by jury."

In *Whitehead* v. *Shattuck*, 138 U. S., 146, a bill was filed to recover and quiet title to certain lands, to which demurrer was sustained. Mr. Justice FIELD said:

> "It would be difficult, and perhaps impossible, to state any general rule which would determine in all cases what should be deemed a suit in equity, as distinguished from an action at law, for particular elements may enter into consideration, which would take the matter from one court to the other; but this may be said, that, *where an action is simply for the recovery and possession of specific real or personal property*, or for the *recovery of a money judgment*, the action is one *at law*. An action

> for the recovery of real property, including damages for withholding it, has always been of that class. The right, which in this case the plaintiff wishes to assert, is his title to certain real property; the remedy which he wishes to obtain is its possession and enjoyment. And in a contest over the title both parties have a *constitutional* right to call for a jury."

Scott v. *Neely*, 140 U. S., 106, was a suit in equity to subject property to the payment of a simple contract debt, but *in advance of any proceeding at law to establish the validity and amount of the debt.* This Court by Mr. Justice FIELD said:

> "The Constitution, in its Seventh Amendment, declares that 'in suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved.' In the Federal courts *this right can not be dispensed with*, except by the assent of the parties entitled to it, nor can it be *impaired by any blending* with a claim properly cognizable at law, of a demand for equitable relief in aid of the legal action, or during its pendency. Such aid, in the Federal courts, must be sought in separate proceedings, to the end that the right to a trial by jury in the legal action may be preserved intact.
>
> "In the case before us the *debt due* the complainants was *in no respect different from any other debt upon contract;* it was the subject of a *legal action only*, in which the defendants were entitled to a jury trial in the Federal courts. * * * *All actions which seek to recover specific property, real or personal, with or without damages for its detention, or a money judgment for breach of a simple contract, or as damages for injury to person or property, are legal actions, and can be brought in the Federal courts only on their law side.*"

Cates v. *Allen*, 149 U. S., 451, was another case in which simple contract creditors sought certain relief in equity *in advance of any judgment* or legal

proceedings upon their contracts. Although authorized by the Code of Mississippi it was held by this Court that such a proceeding would be unlawful in the courts of the United States, because in violation of the constitutional provision. The Court, by Chief Justice FULLER, after citing *Scott* v. *Neeley* and other cases, said:

> "The Code of Mississippi in giving to a simple contract creditor a right to seek in equity in advance of any judgment or legal proceedings upon his contract, the removal of obstacles to the recovery of his claim caused by fraudulent conveyances of property, whereby the whole suit *involving the determination of the validity of the contract and the amount due thereon, is treated as one in equity to be heard and disposed of without a trial by jury*, could not be enforced in the courts of the United States, *because in conflict with the constitutional* provision by which the right to a trial by jury is secured. * * * And as *the ascertainment of the complainant's demand* is by action at law, the fact that the chancery court has the power to summon a jury on occasion cannot be regarded as the equivalent to the right to a trial by jury secured by the Seventh Amendment."

In the present case the court of equity below had no power in the teeth of the Seventh Amendment to the Constitution to decide upon the title to the specific property in question, the possession of which was demanded by the cross bill; nor upon the right of possession; nor in case such possession could not be delivered, to inquire into and decide upon its value, and to assess that value as damages against the cross-defendant; nor to appraise and award damages for the loss of business abandoned in execution of its agreement by appellee; nor to inquire into and decide upon the amount of profits or earnings claimed as incident to the possession or use of the property in question; or to render a money judgment for any of these in any form against the

cross-defendant. As to each and all of these things the general powers of the Court were limited, and the right of the defendant at common law was protected, by the constitutional guaranty.

Plainly in each of these cases decided by this Court, which we have cited, it was the *judgment* of this Court that *taking cognizance in equity of the issues presented* would be *in itself a denial* of the constitutional right. If taking such cognizance of those issues and proceeding to judgment upon them involved denial of the guaranteed right, that would be necessarily because *the case* involved the *application* of the Constitution. It follows inevitably that taking cognizance in the present case of the issues presented by the cross-bill was itself a denial of the constitutional right; and the right was thereby denied because the application of the Constitution was involved in the case. It may be true that not every bill which is alleged to be without equity involves necessarily the application of the Constitution. On the other hand, it is equally true that not every bill must fail to involve the application of the Constitution, because it may be said to be without equity. If a bill "be grounded on a merely legal right" (*Lewis* v. *Cox*, *supra*), cognizable at law and triable by jury when the Constitution was adopted, the fact that it may also be said to be "without equity" will not prevent the Court from seeing in any case, (and for that purpose the Court will look into the bill* and the record†) that its cognizance would deny a right guaranteed by the Seventh Amendment. This is illustrated by the above cases of *Whitehead* v. *Shattuck*, of *Scott* v. *Neeley*, and of *Cates* v. *Allen*. They fall within "*the extent* to which the Seventh Amendment "forbids any infringement of the right of trial by "jury *as fixed by the* common law." This "distinction of jurisdiction" eliminates from the discussion all the cases cited in the argument of appellee in support of this motion.

---

* *Hipp* v. *Babbin*, *supra*

† *Killan* v. *Ebbinghaus*, *supra*.

II.

The case presented involves the application and the construction of clause 1, *Section* 10, *of the first article of the Constitution, which provides that no State shall pass any law impairing the obligation of contracts.*

It has been already stated that certain railway contracts were expressed to run "during the contin- "uance of the incorporation" of the Central Transportation Company. That company was incorporated at that time under a general law of Pennsylvania, with a life limited under the act to twenty years, which period was to expire December 30, 1882. In 1870, many years after the contracts were made, a special act of the Legislature of Pennsylvania was procured by that company, which gave it an additional term of corporate life for a period of ninety-nine years, commencing at the expiration of its then existing term of incorporation. Appellee claimed, and the Court below held, that *by effect of this statute* these contracts became obligatory and their operation was extended for that additional period. No assent of the several railways at any time is pretended.

The claim of appellant may be briefly stated, and the ground of it is obvious. It claimed that the contracts were made with exclusive reference to the then existing charter and term of incorporation. A corporate charter is a contract with the State. The term of corporate life is a part of such a contract. The charter is a contract for precisely what is affirmatively granted, and no more. The Central Transportation Company was given by its contract a corporate life for twenty years. At the time these railway contracts were made it was entitled to that term of corporate life; and it had no shadow of right to more. That grant of corporate prerogative was a contract with the State, and the railway agreements were independent contracts be-

tween the parties to them, founded on that contract with the State and limited by its limitation. This contract with the State, this charter, and this only, was in existence when the railway contracts were made and was the basis of them, and was the "incorporation" to which they referred. Any grant of additional corporate life must be the result of another and distinct contract between the State and the Central Transportation Company, and by that the pre-existing contracts with the railways could not be affected without a new agreement to that effect with them, which is not pretended. Laws existing at the time of the making of the contract enter into the contract as a part of it. "This embraces alike those which affect its validity, *construction*, discharge and enforcement" (*Walker* v. *Whitehead*, 16 Wall., 317); and laws impairing its obligation are unconstitutional, or *they cannot be applied to* the contracts previously existing (*McCracken* v. *Hayward*, 2 How., 612; *Ogden* v. *Saunders*, 12 Wheat., 256). Accordingly, it was the claim of appellant that if the Act of 1870 would have the effect claimed by the appellee and declared by the Court, then the act itself was *to that extent* void, as being in contravention of that provision of the Constitution of the United States which prohibits on the part of the States any enactment impairing the obligation of contracts (Cons., U. S., Art. 1, Sec. 10, Cl. 1).

The argument is made by appellee that, although such is the legal effect and operation of the statute upon the contracts, still the Constitution is not contravened, because the statute does not specifically refer to the contracts and did not in terms "purport to affect the contracts in any way." The inquiry arises, therefore, whether the *meaning and operation* of the Constitution are so limited that a statute of a State may *have the legal effect upon* pre existing contracts which is upheld in the present case, and the Constitution fail of the protection which it was intended and purports to

establish. It seems to counsel for appellant hardly open to argument, but that these questions present here a case which involves the application and *also* the construction of the Constitution of the United States. Our *claim* is that the contracts expressed to run "during the continuance of the incorporation" of the Central Transportation Company expired in 1882. This claim was denied by the Court below upon the ground of the *effect upon them* of the subsequent act of the Legislature of Pennsylvania of 1870. It was held that the statute operated upon these contracts so as to convert them *by its own force* from contracts having twelve years to run into contracts having one hundred and eleven years' duration. It is true the act does not in terms refer to these contracts, and that this effect would ever be claimed was never suspected when it was enacted. But *when the contracts are so construed as to bring them within* such operation and effect of the act, and when on that ground the *claim* of appellant *is denied* that the contracts expired in 1882, the question is presented at once whether such effect of the act is not forbidden and precluded by the Constitution of the United States. If the act when passed was without effect upon these pre-existing contracts, then no question concerning it arises here, and the contracts expired in 1882; but if, when it was passed, it had the character *now accorded to it by the Court below*, then a question of the application of the Constitution arises at once. Against the contention of the appellant they were held to be extended by the effect upon them of that statute, and in no other way. Can it be a sound interpretation of the Constitution that it is solicitous only about the forms and phrases of the State legislation and is otherwise indifferent as to its legal effect and operation upon pre-existing contracts? Or, if the general terms of a law fail to mention specifically particular contracts as intended to be affected by it, that contracts not so mentioned or in terms referred to are beyond the protection of the Constitution and *may*

be impaired in their obligation, limited, enlarged or changed in their meaning and effect with impunity? These questions seem clearly to make a case involving the application and construction of the Constitution of the United States.

III.

The Act of Congress of March 3, 1891, by a separate clause, provides an appeal direct to the Supreme Court:

> "In any case in which the * * * law of a State is CLAIMED to be in contravention of the Constitution of the United States."

These contracts when made were by their terms to expire December 30, 1882. Left to themselves and unaffected by any subsequent or extraneous force, they would without dispute have expired at that date. When the Act of 1870 was passed by the Legislature of Pennsylvania these contracts had twelve years to run. The claim of the appellant and the ground of it and its denial by the Court below are already sufficiently stated. "The objection " to a law on the ground of its impairing the obliga- " tion of a contract can never depend upon the ex- " tent of the change which the law effects in it. " Any deviation from its terms by postponing or ac- " celerating the period of performance which it pre- " scribes, imposing conditions not expressed in the " contract or dispensing with the performance of " those which are, however minute or apparently " immaterial in their effect upon the contract of the " parties, impairs its obligations" (*Green* v. *Riddle*, 8 Wheat., p. 84. The conclusions of the Master and of the Court supported the insistence of the appellee and it was *held* that in 1885 these were *still* existing and valid contracts for the prolonged term.

By the clear terms of the Act of Congress the right of appeal is given in any case where such a *claim* is interposed. It is the *existence* of the claim, and not its correctness, which is made the ground of the appellate jurisdiction. The claimant may be right in his position, or he may not; but *upon* that question he is given a right to the judgment of this Court. Such is the unequivocal language of the Act of Congress; and its plain import is in accord with the decisions of this Court in similar cases.

There is in the argument of appellee upon the relation of this statute to the Constitution an undercurrent of suggestion that the result is effected not directly by the effect and operation of the statute, but indirectly by a *construction of the contracts*, which brought them within the effect of the statute. But the fact remains that without the statute the contracts would inevitably expire in 1882. Their prolongation is brought about only by the *operation upon them* of the statute; while, also, the fact of the *claim* of the appellant, upon which a right to the judgment of this Court is given, remains in the record, and is a statutory basis of appellate jurisdiction. Among the other decisions of this Court, cited below, are those also which establish that the theory of construction suggested is without significance or bearing upon the situation.

The twenty-fifth section of the Judiciary Act of 1789 gave appellate jurisdiction to this Court from the highest court of law or equity in a State, in cases *inter alia*—

> "Where is drawn in question the construction of any clause of the Constitution, of any treaty, or statute of, or commission held under the United States, and the decision is against the title, right, privilege, or exemption, specially set up or CLAIMED by either party under such clause of the said Constitution, treaty, statute, or commission."

Uniformly this Court has held that, where the record disclosed a *claim* of the character thus indicated, the existence of the claim *gave appellate jurisdiction to the Court to examine and decide upon the correctness of the claim.* Such was the decision in *Railroads* v. *Richmond*, 15 Wall., 3, where the whole matter is presented in the short opinion of CHASE, Chief Justice:

> "The defendants in error move to dismiss the writ of error on the ground that the 'record does not show a state of facts that makes any Act of Congress apply to the case.' The record does show, however, that the present plaintiffs in error *claimed* in the State Court, that contracts made with the defendants in error had been rendered void and of no force and effect by provisions of the Constitution of the United States, and of certain Acts of Congress, approved June 15, 1866, and July 25, 1866, and also that the decision of the Supreme Court of Iowa *denied this claim.* The motion to dismiss must, therefore, be denied."

The case of *Hall* v. *Jordan*, 15 Wall, 393, was likewise brought to this Court as within the twenty-fifth section of the Judiciary Act. Here, also, the whole matter is stated in the short opinion of the Chief Justice:

> "The defendant *claimed* that a deed offered in evidence was void, because the stamps upon it amounted only to $13 when they should have been $13.50. The Court admitted the deed, although the Act of Congress provided that no deed not properly stamped should be received in evidence. The decision was against the right *claimed* by the defendant under the Act of Congress, and necessarily involved its construction."

Subsequently upon a hearing of this case, 19 Wall, 271, the Court affirmed the judgment below upon the merits, while at the same time it punished, under the twenty-third rule, the party who had

brought so frivolous a question here, by a judgment of ten per cent. damages in addition to interest and costs.

Section 709 of the Revised Statutes gives similar appellate jurisdiction to this Court in cases

> "Where any title, right, privilege or immunity *is claimed* under the Constitution, or any treaty or statute of, or commission held, or authority exercised under the United States, and the decision is against the title, right, privilege or immunity specially set up *or claimed by either party* under such Constitution, treaty, statute, commission or authority."

Edwards v. *Elliott*, 21 Wall, 532, was a writ of error to the Court of Errors and Appeals of New Jersey. A statute of New Jersey gave mechanics a lien on vessels for building, and provided for its enforcement. In a suit brought under that statute the State Court held that a contract for *building* a vessel was not a maritime contract, and that the lien law of the State did not conflict with the Constitution of the United States. This Court said that those two questions had been undoubtedly raised by defendant in the State Court, and decided adversely to him. It affirmed the judgment of the State Court; but it *took jurisdiction of the appeal* under Section 709 of the Revised Statute, because a *claim* involving a question of the Constitution was made by one of the parties and decided adversely by the State Court, although the claim itself was erroneous and the decision of the State Court was correct.

In *Home Insurance Co.* v. *City Council of Augusta*, 93 U. S , 116, the syllabus is as follows:

> "Where a statute of, or authority exercised under, a State is drawn in question, on the ground of its repugnance to the Constitution of the United States, *or a right is claimed* under that instrument, the decision of a State Court in favor of the validity of such statute or authority, or adverse to the right so *claimed* can be reviewed here."

An insurance company, licensed in conformity to the laws of Georgia, and holding a certificate from the Comptroller General authorizing it to transact business in that State, *claimed* immunity from an ordinance of the City Council of Augusta imposing a license tax, *claiming* that the ordinance was in violation of that clause of the Constitution which declares that no State shall pass any law impairing the obligation of contracts. The case was a writ of error to the Supreme Court of the State of Georgia, which held that the ordinance was not in contravention of the Constitution. In this Court it was insisted that this Court had no appellate jurisdiction in the case. Mr. Justice SWAYNE said:

> "Here there was drawn in question the authority exercised by the city council under the State in passing the ordinance imposing the tax complained of. The question raised was as to its repugnancy to the Constitution of the United States; and the decision was in favor of the validity of the authority so exercised. A right was also *claimed* under the Constitution of the United States. The decision was adverse to *the claim*. The case is, therefore, *within two* of the categories we have stated. The jurisdictional objection cannot be maintained."

This Court, nevertheless, affirmed the judgment of the Supreme Court of Georgia, clearly establishing that it was the *existence* of the claim, and not its correctness, which gave appellate jurisdiction to this Court.

In *Chicago Life Ins. Co.* v. *Needles, Auditor*, 113 U. S,, 574, the appellant was a corporation of the State of Illinois, and it is stated in the opinion that "the main proposition of the counsel was that the "obligation of the contract which the company had "with the State in its original and amended charter "*would be* impaired if that company were held sub-"ject to the operation of subsequent statutes regu-

"lating the business of life insurance, and author-
"izing the courts in certain contingencies to suspend,
"restrain or prohibit insurance companies incorpor-
"ated in Illinois from further continuance in busi-
"ness." The opinion further states that "at the
"final hearing" the company "moved the Court
"upon written grounds for a final decree in its
"behalf; one of which was that the statutes of the
"State under which these proceedings were had
"were in violation of the Constitution of the United
"States in that they impaired the obligation of the
"contract between the State and the company, as
"well as the contracts between the company and its
"policyholders and creditors." Mr. Justice HARLAN, in the opinion, proceeds as follows:

> "But the final judgment necessarily involved adjudication of that *claim*; for if the statutes upon the authority of which alone the auditor of State proceeded, are repugnant to the National Constitution, that judgment could not properly have been rendered. This Court, therefore, has jurisdiction to inquire *whether* any right or privilege protected by the Constitution of the United States, *has been withheld or denied* by the judgment below. And our jurisdiction is not defeated, because it may appear, upon examination of this Federal question, that the statutes of Illinois are not repugnant to the provisions of that instrument. Such an examination itself involves the exercise of jurisdiction. The motion to dismiss the writ of error upon the ground that the record does not raise any question of a Federal nature must, therefore, be denied."

Clearly it was the *existence of the claim* of right and its *denial* which gave the appellate jurisdiction, and gave the authority to this Court on appeal to decide whether the claim was or was not well founded. In the actual case it was held by this Court that it was not well founded, and the judgment below was affirmed.

Wilmington and Weldon Railroad v. *Alsbrook*, 146 U. S., 279, was a writ of error to the Supreme Court of North Carolina. A State law incorporating a railroad exempted its property from taxation. Subsequently another State law provided for an extension of the road and the building of branch lines. The property of these branch lines was taxed by the State under the revenue law of 1891, and the question arose, under a claim to that effect, whether such property was within the contract of exemption contained in the original charter. The State Court held that it was not.

In argument on the question of the appellate jurisdiction of this Court, counsel for defendant in error said: "The decision of the State Court is "based upon a *construction of the contract* itself. "It concedes its validity, but denies that a certain "class of property is within its terms, hence the "writ of error should be dismissed."

Mr. Chief Justice FULLER said:

> "The jurisdiction of this Court is questioned upon the ground that the decision of the Supreme Court of North Carolina conceded the validity of the contract of exemption contained in the act of 1834, but denied that particular property was embraced by its terms; and that, therefore, such decision did not involve a Federal question.
>
> "In arriving at its conclusions, however, the State Court *gave effect* to the revenue law of 1891, and held that the contract *did not confer the right of exemption* from its operation. *If it did*, its obligation *was impaired by the subsequent law*, and as *the inquiry whether it did or not* was necessarily directly passed upon, we are of opinion that the writ of error was properly allowed. *New Orleans Water Works* v. *Louisiana Sugar Co.*, 125 U. S., 18, 38."

Recurring for a moment to the case at bar, we call attention to the similarity in the situation.

If our *claim* is correct that these contracts are to be taken as they stood in terms, and that they referred only to the then existing charter of the Central Transportation Company, then incontestably the alleged operation of the Pennsylvania Statute of 1870 is in contravention of the Constitution. If, however, the appellee is entitled to introduce into them other words so that they shall substantially read: "During the continuance of the *present* incorporation *and during any other term of incorporation* "*that may be hereafter granted by any Acts of the* "*Legislature*," then the Act of 1870 may not be in such contravention. But *whether* the contracts were such in legal effect, whether they may be legally read as if those additional words were in them, is *the question by which* it must be determined *whether* the Constitution *is contravened or not* by the statute of the State. That question is one necessarily for the determination of this Court, and the appellate jurisdiction is conferred for that purpose.

The case of *Mobile and Ohio R. R.* v. *Tennessee*, 153 U. S., 486, was a writ of error to the State Court. The question was whether revenue acts of the State impaired, as was claimed, the obligation of a contract contained in the railway charter exempting its property from taxation. The State Court held that the exemption given in the charter was in violation of the State Constitution and void. Against the appellate jurisdiction of this Court it was urged that *in view of the decision of the State Court there was no contract in existence* to be impaired, the supposed contract being void. In the opinion Justice JACKSON said:

> "The question of the existence or non-existence of a contract in cases like the present is one which this Court will determine for itself, the *established rule being* that where *the judgment* of the highest court of a State, by its terms or necessary operation, *gives effect to some provisions of the State law* which is *claimed* by the unsuccessful party to impair the contract set out and relied on, this Court

> has *jurisdiction to determine* the question *whether* such a contract *exists as claimed*, and *whether* the State law complained of impairs its obligation."

In the case of *New Orleans Water Works* v. *Louisiana Sugar Co.*, 125 U. S., 30, this Court stated that the clause of the Constitution concerning the impairment of contracts is aimed at the legislative power and not at the rulings of the courts. Apparently a pure illustration of this is found in the case of the *Central Land Co.* v. *Laidley*, 159 U. S., 103. There the Act of the State Legislature complained of *was in full force at the time the contract in question was made*, and therefore could not impair its obligation. *A decision of the State Court changing the prior construction of the Act* did impair the obligation of the contract, but this was not within the intention of the United States Constitution. The Court did not give effect (in construing the contract) to a *subsequent law* which was claimed to be in contravention of that Constitution.

In *Huntington* v. *Attrill*, 146 U. S., 647, there was question whether a State court had by its judgment given full faith and credit to the judgment of another State, and this depended on whether the latter judgment was upon a cause of action *penal* in its nature. In laying down the rule that the United States Supreme Court must determine for itself whether or not the said cause of action was penal, Mr. Justice GRAY used (p. 684) the following language:

> "The case, in this regard, is analogous to one arising under the clause of the Constitution which forbids a State to pass any law impairing the obligation of contracts, in which, if the highest court of a State *decides nothing but* the original construction and obligation of a contract, this Court has no jurisdiction to review its decision; but if the State Court *gives effect to a subsequent law, which is impugned* as impairing the obligation of a contract, this Court has power, in order *to deter-*

> *mine whether* any contract has been impaired, to decide for itself *what the true construction of the contract* is."

In *Williams* v. *Louisiana*, 103 U. S., 637, which was a writ of error to the Supreme Court of that State, the Attorney-General sought to restrain payment on certain bonds of the State on the allegation that they were illegal because an attempt to create a debt beyond the limit fixed by an amendment to the State Constitution, that limit having already been exceeded. The State Supreme Court affirmed a judgment that the bonds were void, and the writ of error sought to review that judgment. The defendants insisted that the writ of error should be dismissed for want of jurisdiction. It was claimed, however, on the other hand, that the bonds in question represented an obligation which existed prior to the constitutional amendment, and that they therefore did not increase the debt existing when that amendment was adopted. In the opinion of this Court, Mr. Justice MILLER said:

> "This is denied by the counsel for the State, and *upon the solution* of this question *the whole case depends, both* as to its merits *and as to the jurisdiction of this Court.* For it is insisted by plaintiffs in error that *if their contract existed in effect before* the amendment, the *amendment as construed by the State Court impairs the obligation of that contract*, and this Court can review that question; while if the bonds constitute a new and independent contract, the constitutional provision was properly applied to them and the judgment is right. *As this is the question we are to decide* and as it was raised and insisted on by the plaintiffs in error in the Court below, we think *this Court has jurisdiction.*"

This would seem to be precisely the question before the Court in the present case. In the case just cited, the *claim* that the contract was impaired in contravention of the Constitution of the United

States gave appellate jurisdiction to examine the *question upon which* the question of impairment or not of obligation depended.

University v. *People*, 99 U. S., 309, was a writ of error to the Supreme Court of Illinois. The State Constitution of 1848, then in force, provided that such property as the General Assembly might deem necessary for school, religious and charitable purposes might be exempt from taxation. The charter of the university, as amended in 1855, provided "that all property of whatever kind or description "belonging to or owned by the corporation shall be "forever free from taxation." Certain property of the University was taxed in the year 1874 under the Revenue Law of 1872, which sought to conform the State law on taxation to provisions of the new Constitution of 1870, and which exempted from taxation only such property of institutions of learning as was not used with a view to profit. The Supreme Court of the State held the property in question liable to taxation. On a motion to dismiss the appeal for want of jurisdiction the argument in support of the motion is thus stated in the opinion of the Court:

> "The argument is that the judgment of the State Court is limited *to a construction* of the fourth clause of the amendatory charter in 1855, as it is affected by the constitution under which it was enacted, and that whether that statute was a contract or not, or whether it was properly construed or not, it is still but the decision of a Court *construing a contract* or a statute, and there is no law of the State impairing the obligation of that contract, within the meaning of the Constitution of the United States."

This Court held, however, as in *Wilmington & Weldon R. R.* v. *Alsbrook*, *supra*, and in *Huntington* v. *Attrill*, *supra*, that the State court *went farther* than to decide merely on the construction of

a contract, *for it also gave effect* to subsequent laws which *were impugned* as impairing the obligation of the contract. Mr. Justice MILLER said:

> "If, therefore, the legislation of 1855 *was* a contract which exempted the property in question from taxation, and by the laws of 1872, as construed by the Supreme Court, it is held liable to taxation, it *is manifest that it is the law of 1872* and the Constitution of 1870 *which impairs* the obligation of that contract, *however the Court, by an erroneous construction of that contract, may be led to hold otherwise.* * * * *If it is a contract*, as is contended for by plaintiff's counsel, which, under a true construction of the Constitution of 1848, exempts all the property of the plaintiff which is held by it for appropriation to the purposes of the university as a school, as an institution for teaching, and which is held for no other purpose whatever, and which can as effectually promote the purpose by leases, of which the rent goes to support the school, as in any other way, *then* the law of 1872 and the Constitution of 1870 *do, to the extent of the difference arising from these two constructions*, impair the obligation of the contract of 1855.
>
> "*Whether* that contract *is such as to be impaired* by these later laws is one of the questions of which this Court always has jurisdiction (*Jefferson Branch Bank* v. *Skelly*, 1 Black, 436; *Bridge Proprietors* v. *Hoboken*, 1 Wall., 144; *Delmas* v. *Insurance Company*, 14 *Id.*, 668.)"

In the case itself the Court held that the contract *was such as to be impaired* by the later laws, and that the property in question was exempted from taxation by the charter contract. In the foregoing case the question turned entirely upon the *construction of the contract* contained in the charter of the university and upon the *claim* of right presented by the plaintiff in error. The State Court erroneously construed that contract so that, *as so construed*, its obligation was not impaired by the subsequent

revenue law. This Court took jurisdiction upon the claim of the plaintiff in error, because *if the correct construction was as claimed by the plaintiff in error*, then that revenue law, if applied, would impair its obligation. It is doubtless unnecessary to suggest that in the present case, if the railway contracts in question are construed to be in *legal effect* what they read in terms and what the appellant claims them to be, then the Pennsylvania statute of 1870, as applied by the Court below, manifestly impairs their obligation; and "*whether*" those contracts were "*such as to be impaired by*" the later law "is one "of the questions of which this Court always has "jurisdiction."

In *New Orleans Water Works Co.* v. *Louisiana Sugar Refining Co.*, 125 U. S., 18, the Court by Mr. Justice GRAY said (p. 38):

> "The result of the authorities applying to cases of contracts the settled rules, that in order to give this Court jurisdiction of a writ of error to a State court, a federal question must have been, expressly or in effect, decided by that Court, and therefore that when the record shows that a federal question *and another* question were presented to that Court, and its decision turned on *the other* question only, this Court has no jurisdiction, may be summed up as follows: When the State court decides against a right *claimed under a contract*, and there was no law subsequent to the contract, this Court clearly has no jurisdiction. When the existence and the construction of a contract are undisputed, and the State upholds a subsequent law, on the ground that it did not impair the obligation of the admitted contract, it is equally clear that this Court has jurisdiction. When the State court holds that there was a contract conferring certain rights and that the *subsequent law did not impair* those rights, this Court has jurisdiction *to consider the true construction of the supposed contract*, and if it is of opinion that it did not confer the rights claimed by the State court, and there-

fore its obligation was not impaired by the subsequent law, may on that ground affirm the judgment. So, when the State court *upholds the subsequent law*, on the ground that *the contract did not confer* the right *claimed*, this Court *may inquire whether* the supposed contract did give the right, *because if it did the subsequent law cannot be upheld.* But when the State court *gives no effect* to the subsequent law, but decides on grounds independent of that law that the right claimed was not conferred by the contract, the case stands just as if the subsequent law had not been passed and this Court has no jurisdiction."

C. A. H. Winterstein

Robert J. Lincoln

Edward S. Isham

Joseph H. Choate.

Nos 141 and 496.

United States Circuit Court of Appeals

FOR THE THIRD CIRCUIT.

SEPTEMBER TERM, 1896.

No. 15.

PULLMAN'S PALACE CAR COMPANY,

Appellant,

vs.

CENTRAL TRANSPORTATION COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

BRIEF FOR APPELLANT IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS THE APPEAL.

JOSEPH H. CHOATE,
Of Counsel for Appellant.

United States Circuit Court of Appeals

FOR THE THIRD CIRCUIT.

SEPTEMBER TERM, 1896.

No. 15.

PULLMAN'S PALACE CAR COMPANY,
Appellant,

vs.

CENTRAL TRANSPORTATION COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

BRIEF FOR APPELLANT IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS THE APPEAL.

First.

The only ground for the motion of which the appellant has received notice is that, prior to the taking of the appeal to this Court, the appellant had appealed from the decree to the Supreme Court of the United States, had perfected such appeal and obtained a supersedeas thereon. We submit that this

alleged ground affords no reason for dismissing this appeal; that under the provisions of the Act of March 3, 1891, establishing this Court, an appeal from a final judgment of the Circuit Court, upon the merits, can only lawfully be taken to one court; that is to say, that one court or the other has jurisdiction of the appeal, and necessarily, to the exclusion of the other court. If the case comes within Section 5 of the Act, there is no lawful appeal to this Court, but only to the Supreme Court. If, on the other hand, the case comes within Section 6, the only lawful appeal is to this Court, to the exclusion of the Supreme Court. But in a case of doubt in the mind of the appellant or his counsel, as to whether the case comes properly within Section 5, or within the provisions of Section 6, he is not thereby condemned to take the risk of losing his rightful appeal, but may properly, as we understand the established practice in such cases, take both appeals, leaving it for the courts upon whom the responsibility rests to decide the question of appellate jurisdiction. Whichever appeal is not allowed by the statute, is necessarily unlawful and of no effect; in other words, the case stands as if such appeal had not been taken. If the appeal first taken is not permitted by the statute, the taking it does not prevent the appellant from appealing to the other and proper court, or deprive that court of its rightful appellate jurisdiction. If the appeal in this case to the Supreme Court was not permitted by the statute, it is as if no such appeal had been taken, or as if such appeal had been taken to any other court to which no appeal was permitted, as, for instance, to the Supreme Court of Pennsylvania, or to the Court of Appeals of the State of New York.

The appellant is not, *in a case like the present*, put to any *election* at the peril of losing all his rights and determining for himself finally the doubtful question of jurisdiction. It is a mere question of doubt as to the *appellate* court which has jurisdiction

of the *appeal*. A careful examination of the cases, hitherto decided under this Act, will discover no authority for the monstrous proposition that in such a case of doubt there is any such thing as an election required. There is nothing to elect.

The statement in respect to an election being imperative upon the appellant, or upon the party cast in the judgment, made by Mr. Justice LAMAR, in *McLish* v. *Roff*, 141 U. S., p. 661, relates only to the question of election between the special appellate jurisdiction given to the Supreme Court, *in a case in which the jurisdiction of the Court of first instance is in issue*, and an appeal upon the merits to the Circuit Court of Appeals. In that case *either* appeal would be valid, as the party might elect. Not so here, where only one appeal is valid, and the other appeal must necessarily be unauthorized, void and of no effect.

The case of *Hurst* v. *Hollingsworth*, 94 U. S., 111, is analogous to the case at bar. The question there was whether an appeal or a writ of error to the Supreme Court should be thrown out, *both* having been taken. Just as in this case, the question for the appellant was, which mode would be the valid and effective way of securing a review. The Court refused to dismiss the cause on motion, and Mr. Chief Justice WAITE, delivering the opinion of the Court, said:

> "These motions are all denied. There was but one action in the court below, and there is but one record. When the transcript of that record was brought here by Hurst, his cause was docketed. It is not necessary to enter it twice, because, out of abundant caution and to guard against a possible chance of dismissal, he has brought it here in two ways. He has but one cause; and when we come to examine it we will determine whether it is properly here by appeal, or by writ of error, and will proceed accordingly."

This case was cited with approval in the subsequent case of *Plymouth, &c., Company* v. *Amador*,

&c., Company, 118 U. S., at page 269, where the Court said:

> "There was but one action in the court below and there is but one record, the appeal and writ of error bring up but one order or judgment for review, and there is, therefore, but one case here."

Second.

But assuming the motion of the appellant, upon the single ground upon which it is placed for a dismissal of the appeal to be thus disposed of, this Court may naturally find itself, by the mere fact of the existence of the two appeals in this case, constrained at the outset of the hearing to determine the question of appellate jurisdiction, and may naturally expect from the appellant the reasons which led it to take the two appeals. We therefore proceed to state those reasons, leaving it for the Court to determine what disposition shall be made of the dilemma thus raised—whether finally to dispose of the question itself, or, in the exercise of the power given it by Section 6 of the Act, to certify to the Supreme Court of the United States the question of jurisdiction alone, or that and all the other propositions of law involved in the case, for its instruction. The situation for the appellant is a very serious one, for if this Court should decide upon the record that it had no jurisdiction of the appeal under the terms of the act, and throw the appellant out of Court for that reason, and afterwards the Supreme Court of the United States should decide that *it* had no jurisdiction under the terms of the act, and so throw the appellant out of its precincts, the disposition in both cases would be subject to no appeal, and the appellant, although having all the merits of the case, would lose his review altogether unless the Supreme Court by *certiorari* should call up the case. It was believed

by the counsel for the appellant, that the appellate jurisdiction on this record belonged to the Supreme Court of the United States, or, at any rate, that the question rested in so much doubt, that it was for the Courts alone, and not for counsel, to take the responsibility of determining it. They did not dare take the responsibility of not appealing to the Supreme Court, and run the risk of this Court's determining that it had no jurisdiction.

By Section 5 appeals are to be taken from the Circuit Courts direct to the Supreme Court in any case that involves the construction or application of the Constitution of the United States, and in any case in which the Constitution or law of a State is claimed to be in contravention of the Constitution of the United States. Both of these phrases or clauses of Section 5 of the statute are wholly new, so far as we can discover, not being found in any previous judiciary act or in the Constitution of the United States, and what they mean is necessarily a subject for judicial determination, and, we believe, for the determination of the highest court of the nation.

In this case, two questions arose which seemed to appellant's counsel to involve the construction, or at least the application, of the Constitution of the United States, and under one of these questions, a statute of the State of Pennsylvania was claimed to be in contravention of the Constitution of the United States, and decided by the Court not to be so. In respect to this latter clause of Section 5, it must be noted that the appellate power of the Supreme Court under former judiciary acts has been grounded upon what was decided by the Court below, but no appellate jurisdiction was given to the Supreme Court simply because the law of a State was *claimed* to be in contravention of the Constitution of the United States, as provided in the act of 1891. By this we understand that Congress intended "claimed" *not necessarily by the Court, but claimed by the party*, such claim being overruled by the decree of the

Court. The obvious purpose of Congress was to reserve to the Supreme Court the largest possible appellate jurisdiction in all Constitutional questions.

The first question referred to, which was believed to involve the construction or application of the Constitution of the United States, was this: The appellant had abandoned its original bill, had moved as a matter of right for its dismissal, all the equitable elements of the bill having been eliminated by the decision of the Supreme Court in a former case between the same parties, but the Court compulsorily retained the appellant within its power, for the purpose of enabling the appellee to file a cross-bill for the recovery of the property of the appellee in the possession of the appellant, and damages for its retention or use. The appellant being required, after all its objections had been overruled, to answer the cross bill, *by its answer* took the ground that *by the Constitution of the United States, and by the act of Congress applicable to the case, the appellant was entitled on that question (the question being purely the question of legal title and legal damages) to a trial by jury*, and that the Court had no power to proceed to the trial of those questions in equity, simply because it already had jurisdiction of the parties in the case. In spite of such objection, so set forth in the answer, based upon the Constitution of the United States, and invariably insisted upon, the Court proceeded to assess, damages, and thereafter entered a money decree for damages, exactly as a court of law would do, but without a jury, whereby the appellant, as we believe, was deprived of his constitutional right. If, in this aspect of this question, the case did not involve the construction or application of the Constitution of the United States, we are at a loss to determine how such a case could possibly arise.

Since this appeal was taken to the Supreme Court, that Court has decided, in the case of *Smith* v. *McKay*, 161 U. S., 355, that it has not jurisdiction under Section 5, in a case where the defendant in

equity pleaded that the plaintiff had a complete and adequate remedy at law, and that the appeal should be dismissed, holding that the point so raised did not go to the power of the Court to proceed in the cause, but only to the want of equity in the bill. We submit, however, that a careful reading of that opinion will show that it wholly fails to reach the case where a plaintiff in equity, not content with pleading the want of equity in a *cross-bill* like the present, appeals to the Constitution for the right of trial by jury expressly provided for him in the given case, and we submit that there is a wide difference between the case referred to, and the record now brought before the Court, where the appellant did so expressly and specifically throw itself upon the Constitution. It does not appear from the report of the case referred to that any reference was made to the Constitution of the United States. It was merely a plea in equity that there was no equity in the bill, which, as the Court said, would throw almost every case in equity within the appellate jurisdiction of this Court. This, certainly, was not the intent of Congress in enacting the law. Where a party has a constitutional right, demands it, and is deprived of it, by exercise of compulsory power on the part of the Court, a case, we think, is made which involves the construction, or at least the application, of the Constitution of the United States.

The other question which appellant's counsel believe involved the application of the Constitution of the United States, and in respect to which certainly the law of a State was *claimed* to be in contravention of the Constitution of the United States, arose in this way: The general question on trial was the value of the property of the appellee at the time it was taken into the possession of the appellant under a void and illegal contract. Among its properties there were certain contracts with railroad companies which, by their terms, ran during the continuance of the incorporation of the party of the first part,

the appellee. These contracts all expired on December 30, 1882, which was the then existing limit of the term of the incorporation of the appellee. In 1870, prior to the making of the void lease, the State of Pennsylvania, at the instance of the appellee, passed an act extending the term of its corporate existence for ninety-nine years from the expiration of its existing charter. The point of controversy in respect to these contracts was, first, whether they could be included at all in the assessment of damages; and, second, if they were to be included, whether they were to be valued as contracts expiring in 1882 or continuing for ninety-nine years beyond that date. No assent of the railroad companies to any prolongation of the contracts was claimed or pretended, but the Master held, and the Court affirmed his report so holding, and his conclusion, that the legal effect of the statute of Pennsylvania referred to, was to convert these contracts, for the purpose of assessment of damages, in this case, at any rate, into contracts for the ninety-nine years additional, which of course made them of very different value.

The appellant, in his exceptions to the Master's report, contended that the statute of Pennsylvania could have no such effect, because it was prohibited by Clause 1 of Section 10, of the First Article of the Constitution, from passing any law impairing the obligation of contracts, and that this constitutional provision necessarily made it impossible to give such legal effect to the statute in question; but the judgment stands upon the theory of the proposition so held by the Master, and affirmed by the Court. The Court concluded that these contracts were existing and valid contracts in 1885, for the prolonged term, although by their original tenor, and if left to themselves, they would have expired in 1882. Appellant's counsel were of opinion that in respect to this question, the case involved the construction or application of the Constitution of the United States, and that also in the case a law of a State was

claimed to be in contravention of the Constitution of the United States. It was certainly so claimed on the part of the appellant. Legal effect was given to it contrary to such claim, and in the teeth of the constitutional provision, both by the report of the Master and the judgment of the Court.

Appellant's counsel, therefore, did not feel that the rights of their client would be properly protected without taking an appeal from the decree, under the fifth section, to the Supreme Court of the United States.

The importance of the question of jurisdiction thus presented cannot be overestimated. In this present case, it is of immense importance to the party not to fail of his rightful appeal, whichever it be.

Upon inquiry, appellant's counsel were informed by the Clerk of the Supreme Court of the United States that it is the habitual practice of the Government, through the Department of Justice, in cases of doubt, to take two appeals, leaving it to the Courts to decide which is the right appeal; and it was also learned that it has been usual for the Circuit Court of Appeals, when such a case arises, to certify the question to the Supreme Court, or to await in some way or other the decision of the Supreme Court upon a question which necessarily involves its powers, as well as the powers of the Circuit Courts of Appeals.

The case contains other matters, which, if this Court should determine, in the exercise of the power given to it by the sixth section, to certify to the Supreme Court of the United States the question of appellate jurisdiction, might not improperly go to that Court at the same time.

In the former case between these parties, decided by the Supreme Court of the United States, it was held that the contract of lease made between them in 1870 for ninety nine years was void, and, it being beyond the power of the appellee to make it, was invalid as against public policy.

At the time of this decree the parties had been proceeding under the contract for fifteen years, and they were left by the decree in the position which the record shows them to have been in at the time of the filing of the cross-bill, which is the subject of the controversy here.

The questions involved in this case seem intentionally to have been left open by the Supreme Court in its opinion in the former case, and almost every subject of controversy here involves the effect to be given to the decision of the Supreme Court in the former case, and the legal results flowing therefrom.

The appellants are prepared to present their full case upon the merits here, and to abide by the decision of this Court. They have no choice of tribunals, but are only desirous of obtaining a final and conclusive determination of the matters in controversy by the decision of the Court which has the appellate jurisdiction, and they therefore submit this memorandum, deeming it to be their duty to the Court to explain the exact situation which is shown by the record.

ADDITIONAL MEMORANDUM SUGGESTED BY APPELLEE'S BRIEF ON THIS SUBJECT.

The motion to dismiss is based upon a total misconstruction of Secs. 5 and 6 of the Act of March 3, 1891.

Where a party has an election of remedies, either of which is open to him, he may be put to his election and bound thereby when made.

As in the cases cited in Elliott on App. Proc., where a party may lawfully either file a bill to review a judgment or take an appeal to reverse it, he cannot do both; he must choose between them, take

one proceeding or the other. Having chosen one he must abide by that, and cannot afterwards take the other. This is the ordinary rule of election of remedies, and the reason of it is too obvious for discussion.

But as between the appeal to the Supreme Court, provided for by the 5th Section of the Act of March 3, 1891, and the appeal to the Circuit Court of Appeals provided for by the 6th Section, the party defeated in the Court below has no election. It is not open to him to take the one appeal or the other, as he may choose or prefer.

If the case is one provided for by Section 5, the Circuit Court of Appeals has no appellate jurisdiction, and no act of the party, and no assent of both parties, no action of the Circuit Court or of the Circuit Court of Appeals, or of any Judge of either, can give the latter Court any jurisdiction in the case.

So, if the case is one provided for by Section 6, the Supreme Court has no direct appellate jurisdiction, and nothing can be done by anybody to confer upon it such appellate jurisdiction.

In either case an appeal to the wrong Court, an appeal to the Court to which an appeal is not given by the act, differs in no respect from an appeal to any strange Court not mentioned in the act, as the Mayor's Court or the Probate Court, or any other State court.

In such a proceeding the appeal is only so much waste paper. It is a mere nullity. It cannot possibly oust the jurisdiction of the Court which has the sole and exclusive appellate jurisdiction.

The act makes it an utter impossibility for a given case to belong to both categories. Each given case belongs to one category alone, and is shut out from the other. And in the theory of the law of the act, there is no room for doubt as to the category to which any case belongs. The question in each case as it arises is capable of certain and absolute judicial decision.

The act necessarily assumes, therefore, that whichever Court passes on the question of appellate juristion will pass upon it rightly according to the true and absolute meaning of the language of the act, and does not contemplate any legal possibility of the Supreme Court deciding the question one way and the Circuit Court of Appeals deciding it the other. Legal omniscience is necessarily imputed to both Courts.

But the suitor and his counsel have no such legal omniscience. They can but have an opinion, which is subject in every case to judicial decision. Doubt is open to them and is a necessary incident to their position and relation to the Courts. But because they are in doubt, the suitor cannot be deprived of his right to his rightful appeal. If in a case, the appellate jurisdiction of which belongs only to this Court, he appeals to the Supreme Court, it does not and cannot take the case into that Court, and this Court must assume that that Court will so decide. And if in the same case he appeals to this Court, this Court has the sole and exclusive jurisdiction and will decide the same question, and in legal theory will necessarily decide it in the same way.

But the legal theory of judicial infallibility may not, it is true, in every instance, hold good in practice. A case doubtful to the suitor and his counsel may be so doubtful as practically to admit of different decisions by the two Courts, in which possible instance, happily, the fixed relations of the two Courts and the special provisions of the act afford a prompt and effectual solution of all difficuity. This Court naturally defers to the judgment of the Supreme Court in such a dilemma, and may, and we doubt not will either suspend its decision on the question of appellate jurisdiction until the Supreme Court has had an opportunity to pass upon it, or certify the question, with or without other questions, to the Supreme Court for its instructions, as provided in

the 6th Section, "which instruction shall be binding on the Circuit Court of Appeals in such cases."

The two Courts will not, as the appellee in his brief seems to suppose, either seek or permit conflict between themselves on such a question. They can and will in all cases successfully avoid it by one or the other of the courses suggested. This Court will not seek or consent, as the appellee in his brief seems to suppose, to do wrong or injustice, or by any hasty action on its part to deprive the suitor in any possible event of his rightful appeal, and of the review of the judgment by the one Court or the other which has the sole and exclusive appellate jurisdiction over it.

But assuming the contrary, assuming the impossible contingency that this Court will seek or permit a conflict with the Supreme Court on the question of appellate jurisdiction, or will set itself up against the Supreme Court, the suitor is not even then left without an effectual remedy, for it will still under the provisions of the 6th Section "be competent for the Supreme Court to require by *certiorari* or otherwise the case to be certified to the Supreme Court for its review and determination, with the same power and authority in the case as if it had been carried by appeal or writ of error to the Supreme Court." And it cannot be doubted that the Supreme Court, in the almost impossible contingency supposed, would exercise that power freely and promptly, rather than suffer a suitor to be deprived altogether of his right to a review of the judgment on the merits. No Judge of any Federal Court, and no suitor therein, will impute to the Supreme Court any hesitation in the exercise of the power to do justice, and prevent injustice in such a contingency.

Thus the arguments against two appeals *ab inconvenienti*, so strongly urged by the appellee, are shown to be without foundation. We must assume that the Courts sit to do justice, and not to defeat it, to promote and uphold the rights of suitors, and

not by cunning devices and astute and technical contrivances to defeat them.

The 4th section of the act provides that "the review by appeal, by writ of error, or otherwise, shall be had *only* in the Supreme Court of the United States, *or* in the Circuit Court of Appeals, according to the provisions of this act regulating the same."

By the 5th section appellate jurisdiction is given to the Supreme Court alone, and exclusively—

> "In any case that *involves the construction or application* of the Constitution of the United States.
>
> "In any case in which the Constitution or law of a State is *claimed* to be in contravention of the Constitution of the United States."

And it is conceded that if either of these constitutional questions or points arose in this case, the Supreme Court necessarily has the sole and exclusive appellate jurisdiction to review not only those questions, but all other questions and issues contained in the record. And it must equally be conceded that if neither of these constitutional questions is in the case, the Supreme Court had and could have no appellate jurisdiction, but that under the 6th section this Court alone has such appellate jurisdiction.

Being in doubt, but their doubt inclining to the belief that one or both of these constitutional questions are in the case, the appellant's counsel advised and took an appeal to the Supreme Court. They could not safely or properly have omitted to do so. The clauses by which the appellate jurisdiction of the Supreme Court is determined are utterly novel, and await the construction of the Courts, which has not been directed to them.

Still, being in doubt, and determined at all events to save the right of their client to a review of the judgment on the merits by whichever Court had the

sole jurisdiction, they advised and took the appeal to this Court.

The effort is now made by this motion to deprive us of this appeal, and if it shall be decided by the Supreme Court that the sole appellate jurisdiction was vested here, then it is claimed that we shall have no review upon the merits whatever.

The appellee's counsel first suggests that the appellant had an election of remedies, and could take either appeal as it chose, and having appealed first to the Supreme Court, is bound by that. We have already shown that by the necessary construction of the act he had no election.

This is the real basis of his argument. He recurs to it on page 25 of his elaborate brief thus:

> "The appellant took an appeal to the Supreme Court, *which secured there a hearing of all the questions involved*, provided those questions included a question arising under the Constitution of the United States; but it also ran the risk that if those questions did not include a constitutional question, the Supreme Court must in the end dismiss the appeal without regard to the merits. *On the other hand appellant might have taken an appeal to the Circuit Court of Appeals, in which case it would have equally secured a hearing on all the questions involved, and could have had any constitutional question certified by the Circuit Court of Appeals to the Supreme Court. In the case of an appeal to the Circuit Court of Appeals appellant ran no risk of having its appeal dismissed without a hearing on the merits, as the Circuit Court of Appeals had in any event jurisdiction because of the questions involved other than constitutional questions. There were therefore two courses open to the appellant, one insolving a risk of a dismissal without a hearing on the merits, the other involving no such risk.*"

This is all directly in the teeth of the express provisions of the statute.

If the case involves either of the constitutional questions named, the Appellate Court has the sole and exclusive jurisdiction to decide not only those, but all the questions in the record and all possible appellate jurisdiction of this Court is expressly excluded as absolutely as in prize causes, or convictions for capital or otherwise infamous crimes. So that it is not true that this Court "had *in any event* jurisdiction because of the questions involved other than constitutional questions," or that "by an appeal to this Court (assuming that the constitutional questions were involved) appellant would have equally secured a hearing on all the questions involved," or that "he could have had the constitutional questions certified to the Supreme Court," for in the case supposed, this Court would have no jurisdiction whatever, either to decide or to certify.

The words in the 6th section, "in all cases other than those provided for in the preceding section of this act," effectually and equally exclude from the appellate jurisdiction of this Court all cases provided for in the second, third, fourth, fifth and sixth clauses of the fifth section of the act.

The appellee further relies upon the cases of *McLish* v. *Roff*, 141 U. S., 661-665; *Maynard* v. *Hecht*, 151 U. S., 324-326, and *U. S.* v. *Jahn*, 155 U. S., 109, as authorities in support of his position. Those cases deal only with the exceptional case of the certified question of jurisdiction of the Circuit Court, when the appeal is held to be good for nothing without the certificate, which, of course, the party defeated may require or not as he chooses.

"This is not a case where the jurisdiction of the Circuit Court is in issue," and those cases have nothing whatever to do with the question here. They merely determine the construction of the first clause of the fifth section, and settle the practice as to the review of the single question of the jurisdic-

tion of the Circuit Court—having no relation whatever to the other clauses of Section 5.

In *McLish* v. *Roff*, the defendant had demurred to the jurisdiction of the Circuit Court, and his demurrer having been overruled, he took out a writ of error to the Supreme Court, *before final judgment*, and the only question decided in the case was whether the writ of error provided for by the 5th section could issue in any case except from the final judgment of the Circuit Court, and it was held that it was impossible that Congress, in view of the previous statutes, rules and practice, could have intended any such radical change, and that there was nothing in the provisions or language of the act to justify such a revolutionary idea.

It was in reference to the election, given as to the question of jurisdiction only after final judgment in the Circuit, to have the special question of jurisdiction certified to the Supreme Court, or, waiving that, to appeal on the merits to the Circuit Court, that the language quoted on page 18 of appellee's brief is used by Mr. Justice LAMAR, and it is in reference to the same limited matter of the certified question of jurisdiction that the same language is repeated in the other cases referred to.

But the Court in *McLish* v. *Roff* is very careful to say (p. 666) that the act "*provides for the distribution of the entire appellate jurisdiction of our national system between the Supreme Court of the United States and the Circuit Court of Appeals therein established, by designating the classes of cases in respect of which each of those two Courts shall respectively have final jurisdiction.*"

The Supreme Court by its decisions has defined the case provided for by the first clause of Section 5 to be the case, if and when the question of jurisdiction is certified up with a writ of error. Then the

Supreme Court gets jurisdiction to decide that question alone. If no such question is certified (and it is for the party to require such certificate or not as he chooses), and the case does not come within any of the other five clauses of Sec. 5, then the appellate jurisdiction belongs to the Circuit Court of Appeals, under Section 6, being one of the "cases other than those provided for in Section 5."

Chappell v. *U. S.*, 160 U. S , 508.
Maynard v. *Hecht*, 151 U. S., 324.

But when we come to the other five clauses of the 5th section these decisions have no application, and could by no possibility have been intended to have any.

Appellee's counsel emphasizes the word *may* in the first line of Section five in the sentence, "That appeals or writs of error may be taken from the existing Circuit Courts direct to the Supreme Court in the following cases," intimating but not expressly claiming that the use of the word *may* made the appeal direct to the Supreme Court optional in all cases stated in Section 5, leaving it to the choice of suitors to desert the Supreme Court altogether and to leave it nothing whatever to do on direct appeal, but only to exercise a supervisory jurisdiction on questions propounded to it for instructions by the Circuit Court of Appeal, or called up by it from those courts by *certiorari*. But the object of the act, to distribute the final jurisdiction between the two courts by designation of classes of cases, absolutely forbids such an idea, and the fact that by the sixth section the appellate jurisdiction of the Circuit Court of Appeals is expressly limited to "cases other than those provided for in the preceding section of this act," that is to say, to cases in which the Supreme Court has not by the 5th section appellate jurisdiction, is equally fatal to the suggestion.

Again, the appellee's brief (p. 25) cites another passage from Mr. Justice LAMAR'S opinion in *McLish*

v. *Roff*, which will bear no such application as is there intended to be given to it. He was there treating of the precise point raised by the appeal, whether there could be such a thing under the first clause of Section 5 as a writ of error, *before final* judgment, and was answering the point made that in the 6th section the word *final* was omitted, and all that he meant and all that he said in the passage cited was, that if a writ of error could be taken before final judgment in the case where the question of jurisdiction was certified, it must be allowed in the same way in all the other cases provided for in Section 5 in respect to which the word "final" was not employed.

But there is another conclusive answer to the argument sought to be raised from a misapplication of what was decided and said by the Supreme Court in *McLish* v. *Roff*. The fifth section of the act in its second and third clauses provides for a writ of error on appeal to the Supreme Court from the final sentences and decrees in prize causes, and "in cases of a conviction of a capital or otherwise infamous crime." And these two classes of cases are in exactly the same category as the cases in which constitutional questions arise, specified in the fourth, fifth and sixth clauses. All alike are in the language of the sixth section, "Cases provided for in the preceding section of this act," and all of them alike are excluded from the appellate jurisdiction of the Circuit Court of Appeals, which is expressly limited to cases "*other*" than those.

What would be thought of the proposition that, under the precise and well defined language of Sections 5 and 6, the defeated party in a prize cause, or a party convicted of a capital or otherwise infamous crime, had an election by force of the word "*may*" in Section 5 to appeal or take a writ of error either to the Supreme Court or to the Circuit Court of Appeals, and that an appeal wrongly taken to this

Court would defeat his rightful appeal to the Supreme Court? It would be scouted as preposterous.

But the claim made by the appellee on this motion is equally preposterous. When a party appeals to the Supreme Court under either of these five clauses, he does not appeal on any limited question but on the whole case, and the Supreme Court gets jurisdiction of the whole case, to the exclusion of this Court.

The Supreme Court has repeatedly held that upon an appeal or writ of error authorized by the 4th, 5th and 6th clauses of Section 5, it acquires jurisdiction to determine not the constitutional question alone, but also all the questions in the case. In the language of that Court itself it "has jurisdiction of the case, the power to dispose not merely of the constitutional question, but of the entire case including all questions." This entire jurisdiction it gets and can only get upon the 5th section of the act. Thus the case is one provided for by the 5th section, and the necessary effect of the language of the 6th section is to exclude the Circuit Court of Appeals from appellate jurisdiction in those cases, and to forbid all idea of option or election between them.

Chappell v. *U. S.*, 160 U. S., 509.
Nishimura Ekin v. *U. S.*, 142 U. S., 651.
Homer v. *U. S.*, 143 U. S., 577.

Finally, the appellee relies in support of his motion upon a decision of the Supreme Court of Louisiana, arising under some statute or constitutional provision not cited or referred to, which seems to hold that under a system distributing the appellate power between two appellate courts, an appeal to one pending and undisposed of requires the dismissal, on motion, of an appeal to the other.

This decision, if it went to the length claimed, would have no authority here. The Federal Courts are not in the habit of resorting to the practice or decisions of State Courts under different statutes

and different systems of law for the construction of acts of Congress or the regulation of Federal practice.

But further it appears from the record of the case itself, as set forth in the appellee's brief, that the same Court has decided the same question both ways; in fact, twice the other way. Once in *Bennett* v. *Creditors*, and again in *Henry* v. *Tricon*.

But, again, the case relied on does not hold that under a statute distributing appellate jurisdiction between two appellate courts, the party aggrieved and in doubt may not appeal to both courts; it does not hold that he is driven to an election at the risk of losing his right of appeal altogether. It does on the contrary hold that he may take both appeals, and the decision comes down to the extremely narrow and technical point of the State or local practice, that the second appeal must be dismissed, if it is "*lodged*," whatever that may mean in Louisiana practice, before the first appeal is disposed of, and even then the Court only dismissed it *provisionally, without prejudice to the new appeal, after and in case the first appeal to the other appellate Court should be disposed of.*

In *Bennett* v. *Creditors* the Court held:

> "*The first appeal prosecuted was a nullity and the second legal and valid. It was in force and could be prosecuted in accordance with the order granting it. Because the other order obtained at the same time was null and void it could not affect the order of appeal returnable to this Court.*"
>
> "*If this case stood in like position we should pursue the same course.*"

Again (Brief, p. 23):

> "*We have gone very far, possibly too far, in permitting such radically inconsistent pleading as the taking of two self-contradictory orders of appeal from the same judgment to two different courts at the same time. No*

express provision of law sanctions such a practice, and we have given it our approval only to relieve parties from the responsibility of deciding in advance doubtful questions of jurisdiction, and to relieve them from the unfortunate consequences resulting in case the order of appeal first returned and presented for action should be annulled for want of jurisdiction."

Thus, the Court treats it as a mere question of local practice It seems that there the order of appeal is the fundamental step in the appeal which saves the right; all that follows is mere practice, not to allow the second appeal to be *lodged* before the first is disposed of. But the order of appeal to save the right of the party is unknown in Federal practice. A perfected appeal is all that can save the right, and, according to the analogy of the two positions so far, the case cited would seem to be authority for the position that whatever is necessary to save the right of appeal may be allowed simultaneously to both appellate courts, withholding the second from final lodgment till the first is disposed of.

The grounds on which their very technical ruling under their practice is based have no application to appeals under the Act of Congress of March 3, 1891. There it was not treated as a question of appellate jurisdiction, but only as one of pleading. Here the sole question is that of appellate jurisdiction. If the one court has jurisdiction, the other has not, and the appeal to it is a nullity. Our proposition here under this Federal judiciary act does not involve "the philosophical impossibility of two bodies occupying the same place at the same time." Under our Federal system and under this act of Congress, for this Court to entertain jurisdiction of the appeal to it, would not be in effect to order a dismissal of the appeal to the Supreme Court, in advance of a determination by that Court of its own jurisdiction. It

certainly is not true under this judiciary act, that the appellants, by invoking the appellate jurisdiction of the Supreme Court, have created jurisdiction in that Court in spite of the act, or that it must submit to any such non existent jurisdiction. It *does* lie in our mouths under the Federal system to raise the point of jurisdiction of the Court before which we are at any stage; and this Court can decide that it has jurisdiction under the fifth section of the act, and that the Supreme Court has none, although by the modes pointed out already, it may properly avoid the necessity of doing so, and may leave that question to be decided first by the Supreme Court.

It is not true that a second appeal to another court after an appeal by the same party to the first court would create the anomaly of each having *a right* to enter a decree and enforce it. It is only the Court which, under the act, has the sole and exclusive appellate jurisdiction that can render and enforce a final decree on the merits between the parties. The other court can only decline to entertain the appeal and must dismiss it.

Nor is it true that, by taking two appeals, the appellant can secure any delay not contemplated by law. For instance, in this case the appeal was taken within the six months allowed by law. Had the appellee so chosen he might have moved in March last to dismiss our appeal to the Supreme Court, if he thought it had no appellate jurisdiction. And if his motion had been granted he could have the merits finally disposed of at this term of the Circuit Court of Appeals, the first term sitting at which it could be reached.

We, of course, do not claim that this Court is bound to suspend its proceedings until the Supreme Court has had an opportunity to pass upon the question of appellate jurisdiction, or to certify the question for instruction. We shall be perfectly content to have it go on and decide all questions in the cause. We have only suggested what we believe to

be the orderly and regular course of Federal procedure.

We further deny the statement in appellee's brief that our application for a writ of error to the Supreme Court was opposed and argued.

What was applied for was a special order allowing the appeal. The appellee's counsel denied that any constitutional question was involved, but admitted that if such question existed, the alleged right of appeal to the Supreme Court would be absolute and not dependent on the assent of the Circuit Court. The Court decided that Court had no authority under the statute to allow or disallow such appeals; that the appeal, if warranted by the statute, was of right, and refused to grant a special allocation, leaving the appellant to decide for himself (Record, p. 1199).

JOSEPH H. CHOATE,
Of Counsel for Appellant.

Nos. 141 and 496.

JAN 31 1898
JAMES H. McKENNEY,
CLERK

Brief of Isham, Wintersteen & Choate for Appellant.

United States Supreme Court.

October Term, 1897.

Filed Jan. 31 1898.

No. 141.

PULLMAN'S PALACE CAR COMPANY,

Appellant,

vs.

CENTRAL TRANSPORTATION COMPANY,

Appellee.

No. 496.

PULLMAN'S PALACE CAR COMPANY,

Petitioner,

vs.

CENTRAL TRANSPORTATION COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

BRIEF AND ARGUMENT OF EDWARD S. ISHAM, FOR APPELLANT.

A. H. WINTERSTEEN,
EDWARD S. ISHAM,
JOSEPH H. CHOATE,
Counsel for Appellant.

United States Supreme Court,

OCTOBER TERM, 1897.

PULLMAN'S PALACE CAR COMPANY, Appellant, vs. CENTRAL TRANSPORTATION COMPANY, Appellee.	No. 141.
PULLMAN'S PALACE CAR COMPANY, Petitioner, vs. CENTRAL TRANSPORTATION COMPANY.	No. 496.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

ARGUMENT OF EDWARD S. ISHAM FOR APPELLANT.

Statement.

The only subject of controversy here is the legal effect to be given to the judgment of this Court in the case between the same parties, and founded on the same contract, which is reported in 139 U. S., 24. From the standpoint of the appellant it may be said that the fundamental question is whether effect is or is not to be given to that judgment.

In that case the Court held void a contract between these parties, called a lease, because the lease itself was *ultra vires* of the lessor, the Central Transportation Company, and because covenants of *that* company in it were *in violation of public policy*. This appeal is from a decree in favor of the lessor in that lease for $4,235,044, upon the prayer of its cross-bill for an accounting for the value of property transferred and contracts alleged to have been assigned in performance of the lease and for its purposes, and for earnings, and for the value of the business of the lessor alleged to have been lost or destroyed by effect of the lease and of the acts of transfer and assignment in performance of it.

That contract of lease is shown in the Record at page 23. The case in which it was held void (*Cen. Trans. Co.* vs. *Pullman's Palace Car Co.*, 139 U. S., 24), was an action at law for the collection of a quarterly installment of the annual payment, called a rental, covenanted to be made to the Central Company. The Court refused to enforce the covenant, because the contract which contained it was unlawful.

As elementary factors in this argument, we may give distinctness to the elements of that contract by reason of which this Court held it illegal and therefore void. They were three:

FIRST.—That it was technically *ultra vires* of the Central Transportation Company, the lessor, that is, it was beyond the powers conferred upon that company by the legislature.

SECOND.—The undertaking of that company was also a *violation of public policy* in that "it involved *an abandonment of its duty to the public*," for it undertook to *transfer*, for a period, "nearly co-extensive with the duration of its own corporate existence, *the whole conduct of its business, and the performance of all its public duties to another corporation*," and the "*real purpose* of the transaction was

under the guise of a lease of personal property, to transfer" nearly its "whole corporate franchise, and to continue its existence for the *single purpose of receiving compensation for not performing its duties.*"

THIRD.—There was strong ground also for holding that the covenant of the Central Transportation Company, the lessor, that it would not, during the term of the lease, engage in the business for which it was incorporated, made the contract between the parties void, "because in *unreasonable restraint of* "*trade*, and *therefore contrary to public policy.* "* * * A contract by which a corporation char- "tered to perform the duties of a common carrier, "or any other duties to the public, *agrees that it will* "*not perform* those duties at all, anywhere, for "ninety-nine years, is *clearly unreasonable and* "*void.*"

This Court specified with precision the several illegal elements because of which it held the lease to be void. It said:

> "In short, the plaintiff not only parts with all its means of carrying on the business and of performing the duty for which it had been chartered, of transporting passengers and making and letting cars to transport them in, but it undertakes to transfer, for ninety-nine years, nearly co-extensive with the duration of its own corporate existence, the whole conduct of its business, and the performance of all its public duties, to another corporation, and *to continue in existence* during that period *for no other purpose than* that of receiving, from time to time, from the other corporation the stipulated rent or compensation, and of making dividends out of the moneys so received.
>
> "Considering the long term of the indenture, *the perishable nature* of the property transferred, the large sums to be paid quarterly by the defendant by way of compensation, its assumption of the plaintiff's debts, and the frank avowal in the indenture itself

> *of the intention of the two corporations to prevent competition and to create a monopoly,* there can be no doubt that the *chief consideration for the sums to be paid* by the defendant *was the plaintiff's covenant not to engage in* the *business* of manufacturing, using, or hiring sleeping cars, and that the *real purpose of the transaction was, under the guise of a lease of personal property,* to transfer to the defendant nearly the whole corporate franchise of the plaintiff, and *to continue the plaintiff's existence for the single purpose of receiving compensation for not performing its duties.*
>
> "The necessary conclusion from these premises is that the contract sued on was unlawful and void, *because* it was beyond the powers conferred upon the plaintiff by the Legislature, *and because* it involved an abandonment by the plaintiff of its duty to the public.
>
> "There is strong ground, also, for holding that the contract between the parties is void, because in unreasonable restraint of trade, and *therefore contrary to public policy.* * * * A contract of a carrier, whether an individual or a corporation, not to carry passengers or goods over a particular route, may be reasonable and valid (*Pierce* vs. *Fuller*, 8 Mass., 223; *Palmer* vs. *Stebbins*, 3 Pick., 188; *Leslie* vs. *Lorillard*, 110 N. Y., 519). But a contract by which a corporation, chartered to perform the duties of a common carrier, or any other duties to the public, *agrees* that it will not perform those duties at all, anywhere, for ninety-nine years, *is clearly unreasonable and void.*"

The contract of lease, therefore, was held unlawful, *not only* because technically *ultra vires,* but also because in *two* distinct particulars, *in violation of public policy* and of *public duty.*

As all the controversy in this case occurs under the canopy of this cross-bill, and as the cross-bill can find jurisdiction in the Federal Court only as it is an outgrowth of the original bill of the Pullman Company, and by reason of its connection with

operative equitable elements of that bill, it is *imperatively necessary to consider, first,* the subject, and *purpose* concerning the lease, of the original bill; *second,* the *effect* upon that bill of the judgment which held the lease to be void, and *third,* the effect of its abandonment by the complainant, who moved its dismissal.

Then, as it is contended that the cross-bill was allowed to be filed in direct opposition to the rules of procedure and the precedents of the Court; that it is in no respect a cross-bill, but is distinctively an original bill; that as an *original bill* the courts of the United States have no jurisdiction of the parties; that as a *cross bill* the Court of Equity can take no cognizance of its subject-matter; that moreover no court of either law or equity can give the relief sought by it, it is *imperatively necessary* to consider the subject and *purpose* of the cross-bill and its relation to the original bill and to the judgment of this Court upon the lease.

We may then inquire: What justification can be found for the decree below?

The original bill; its subject and purpose.

When this bill was filed a judgment at law on the covenants of the lease had been already rendered against the complainant for the first installments of rent accruing in 1885. This judgment had been appealed from, and subsequently, in this Court, it was reversed (*Pull. Pal. Car Co.* v. *Cent. Tr. Co.*, 139 U. S., 62). Other actions at law for subsequent installments of rent were pending, and in the latest one, begun September 21, 1886, the invalidity of the lease was specially pleaded, and in that case it was held to be void (*Cent. Tr. Co.* v. *Pull. P. C. Co.*, 139 U. S., 24).

The original bill was filed January 25, 1887, after entry of the judgment for rent above mentioned,

and pending the appeal therefrom. It was filed in support of the lease, and sought the aid of the Court in giving affirmative execution to certain provisions of the lease itself which are given in the note below.* Under specified circumstances they authorized its modification or its termination, but provided, in case of such termination of the lease, for the restoration of the demised property. Upon this subject the provisions were numerous and specific, and restoration strictly conforming to the terms of the lease had become impossible. The bill, therefore, alleging *an election declared in* June, 1886 (*Rec.*, p. 35), *to terminate the lease*, prayed the aid of the Court in a substantial instead of a literal performance of the requirements of the lease in that particular. Such was the burden of the bill.

The bill also averred as an additional ground for equitable relief, that the complainant had, in January, 1885, been dissuaded by the defendant from its *then* declared purpose to terminate the lease, and had been induced to adopt the other alternative of paying the defendant an equitable share of the revenues that might be realized under the lease; that this had been then agreed to by the defendant and the agreement afterwards repudiated; and it prayed that the Court *would decree whether* the election to pay a share of the net revenues instead of terminating

---

* "EIGHTH.—In the event that any of the railroad companies mentioned in the assigned contract shall at any time during this agreement refuse to permit the cars of the second party to be run on and over their respective lines of roads, so that by reason of such prevention or refusal the profits, income, revenue derived from and under any other and remaining contracts with other and remaining railroad companies mentioned in the assigned contracts, shall fall below the sum of two hundred and sixty-four thousand dollars ($264,000), then and in that event said second party shall have the right either to declare this contract null and void, and surrender to said first party the said hereinbefore-demised property, or shall and will pay in like manner, in lieu of the said sum of two hundred and sixty-four thousand dollars ($264,000), such sum or share of the net revenues from the remaining lines of roads as the parties hereto may at that time agree upon."—*Pullman's Pal. Car Co.* vs. *Cent. Trans. Co.*, 139 U. S., 63.

said lease *was not conclusive upon* both parties thereto. *If not* so binding, it prayed that the act of termination declared in June, 1886, *might relate back* and take effect from January, 1885.

Upon these grounds and these only the complainant moved upon the bill and certain affidavits for injunction against the bringing of suits at law for installments of rent accruing subsequent to its election, declared in June, 1886, to terminate the lease, and *also* for injunction against the further prosecution of the suits pending for the installments of rental which accrued *prior* to that declaration of election and subsequent to January, 1885; and prayed for a receiver (Record, p. 22) to take possession of the cars or other property which the complainant had received under the lease and could still restore.

The bill stated incidentally to the Court the advice of counsel which the complainant had received that the lease itself was invalid, and not enforceable by either party. It did not insist or aver that the lease was void for illegality, *it did not repudiate it* or *disaffirm it*, or *refuse on that ground to pay rental or otherwise to perform its terms.* It contained no prayer that it should be held void. It stated the advice of counsel and submitted that matter to the Court, but its attitude upon the subject was entirely passive. The clauses upon that subject are in the record at page 20. They were accorded no significance and engaged no attention in the Court below until this part of the bill was suddenly—after the lease had by this Court, in another case, been held void, and after the complainant had moved to dismiss the bill—seized upon and magnified into new proportions for the sake of support for a cross-bill which the defendant then sought to present. It was caught upon as the only link by which the cross-bill could be apparently connected with any subject matter of the original bill; and this may be thought important in other stages of this argument.

That these clauses were accounted no essential part of the bill when the bill and *the purpose* of it were under consideration by the Court, but as quite incidental and subordinate to its actual purpose and scope, seems indicated by the record. With great deference, however, a singular misapprehension seems now to appear upon that point. The Court by its order on the application below for injunctions made *no question* of the *validity* of the lease, but treated it as valid; for it *enjoined* suits *for rent accruing after July*, 1886, but declined to enjoin those for rent accruing before that date, for the reason, as it held, that the matters of defense suggested, relating to the election made in January, 1885, and the proposed termination of the lease then, would be equally as available in the suits at law as in equity. It also refused the appointment of a receiver.

Now rent accruing after July 1, 1886, would be rent accruing *after* the *election* to terminate the lease, and would be barred by that election. But the *invalidity* of the lease would be as good a defense at law to an action on the lease for that rent as for any other. The ground of distinction seems obvious.

In the opinion of BUTLER, *J.*, filed December 14, 1891 (Rec., p. 552), denying the motion of the complainant to dismiss the original bill and allowing the cross-bill to be filed, the incidental suggestion of the bill upon the *subject of the validity* of the lease is first given prominence. And, in view of the indications of the Record, we are entitled to question the accuracy of the light in which that *subject* is presented. The opening sentence would indicate that it constituted the *leading purpose and chief burden of the bill;* and the Judge says that the Court declined to enjoin an action then pending, brought to recover rent previously due, "*because* "*the question of validity raised* could be interposed "and decided on the trial thereof." The same suggestion is found again in the opinion of the same

Judge referring this case to a Master, in the Record, page 1128. The order of the Court, made on the 28th of April, 1887, is found at page 104 of the Record, and is shown in the foot note.*

Subsequently, after *proofs* had been taken of the action of the defendant *in inducing the complainant to forego the termination* of the lease in January, 1885, and *to elect instead thereof* to pay under the lease a share of net earnings, the motion for injunction against the prosecution of suits for rental accruing between January, 1885, and July, 1886, was renewed. The grounds of that motion, the action of the Court, and *the considerations upon which it acted*, seem to be shown without ambiguity in the opinion of Mr. Justice BRADLEY, which was filed March 2, 1888, and is found in 34 Fed. Rep., 357, and in the Record at page 541 The matter was heard before Justice BRADLEY, Judge MCKENNAN and Judge BUTLER.

Justice BRADLEY, in his opinion, said:

> "Upon the renewed application for an injunction in this case we do not think that any

---

* *Decree of Preliminary Injunction.*

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

PULLMAN PALACE CAR CO. vs. CENTRAL TRANSPORTATION CO.	Oct. Sess., 1886. No. 44.

And now, April 28, 1887, this cause having come on to be argued upon motion for preliminary injunction upon bill, answer and affidavits, the answer being read as an affidavit; and the Court being fully advised in the premises, it is, upon due consideration, ordered that a special injunction issue restraining the Central Transportation Company from further prosecuting against the said Pullman Palace Car Company the suit at law in the Circuit Court of the United States, No. 75, October Sessions, 1886, and from instituting or prosecuting any other suit *for rent accruing after the 1st of July*, 1886, *under the lease* of February 17, 1870, described in the bill of complaint, and the injunction prayed for restraining the respondents from prosecuting suit for rental accruing *antecedently* to the 1st day of July, 1886, is refused. The application for a Receiver is also refused.

new facts are presented which should induce us to change the conclusion formerly reached, to wit, that the injunction should be denied as regards the action brought for rent accruing prior to the first of July, 1886, *when the complainants gave notice of their election to determine the lease* and contract of 1870.

"The ground of relief set up in the bill is that when, at the expiration of the contract with the Pennsylvania Railroad Company, in January, 1885, the complainants contemplated giving notice of their election to terminate the lease, in view of the reduction of net revenues below the amount of rent reserved, the defendants, through their agents, induced and persuaded the complainants to adopt the other alternative of paying them an equitable sum or share of the net revenues that might be realized and as should be agreed upon, and that the complainants consented to this and acted upon that understanding in concluding a new contract with the Pennsylvania Railroad Company. The complainants contend that after this arrangement had been gone into it was inequitable and unjust for the defendants to claim and sue for the original rent. This ground was insisted upon on the former motion; but it is contended that since then the facts have been more fully elicited by the proofs, and that it has been shown that the complainants actually gave notice to terminate the lease, but were induced to withdraw it and to proceed upon the other alternative. Though this is not the way in which the case is presented in the bill, we do not see that it makes any material difference in the case as far as the application for an injunction is concerned. If the facts contended for are a good ground for relief at all, they are as available as a defense at law as in equity. They are set up for *the purpose* of showing that the *condition subsequent* created by the eighth article *of the lease*, the purpose of which was to cause the covenant to pay $264,000 per annum to cease, *has been accomplished*. Proof that that condition has been accomplished would be a legal defense to the action."

Nothing here indicates any understanding but that the whole proceeding was founded upon the lease and upon the authority of the provisions it contained. With all due deference, we submit that this opinion of Mr. Justice BRADLEY shows what the grounds were upon which the injunctions were asked, and what the questions were which the Court on that application considered could be interposed as well in the trials at law. The question of *validity* appears not to have been one of them.

When afterwards the lease was by this Court held to be unlawful and void, that judgment clearly disposed of all that part of the bill of complaint which founded its prayer for relief upon provisions of the lease itself. And as to the residue of the bill, even if it were conceded to have been all that is now claimed concerning it, viz., a bill to procure the lease to be declared void for illegality, and for restoration of property received and an accounting for business done under it, it is equally clear that under decisions of this Court such a bill has no place in a court of equity (*St. Louis, Vandalia, &c., R. R. Co.* vs. *Terre Haute R. R. Co.*, 145 U. S., 393). Such a bill should be dismissed upon demurrer for want of equity. It is obvious that the subject matter and purpose of the bill were entirely disposed of and eliminated when the lease was adjudged void, and that the bill no longer presented any equitable element whatever. Nothing could be done under it, and nothing remained but to dismiss it.

Accordingly the complainant in April, 1891, moved to dismiss the original bill at its own cost. But this permission was *refused* by the Court below and that Court retained the bill *abandoned by the complainant*, for the sole and delared purpose of furnishing to the defendant jurisdiction for a cross-bill, which it was given leave to file (see opinion of BUTLER, *J.*, Rec., p. 552; 49 Fed. Rep., 261).

The Cross-Bill.

The motion for leave to file the cross-bill (Rec., p. 552), stated that in it the defendants would "avail themselves of the tenders of relief made by complainants in their bill." The cross bill itself averred that under the lease all the property therein described was delivered to the complainant; that it was delivered and received in pursuance of the lease, and for its specified purposes; that since the filing of the bill and answer the Supreme Court of the United States had held the lease "invalid by reason "of the same having been *ultra vires, and for other* "*reasons*" (Rec., p. 556); and that said agreement was therefore null and void. It averred that it was the duty of the cross-defendant to return the said property, including *inter alia*, the patent rights, the 119 cars, together with their bedding and equipment, the contracts which had been assigned to it and all new contracts and renewals thereof entered into with any of the railroad companies with whom the cross-complainant had contracts at the time of making said agreement. The cross-bill then proceeded as follows:

> "If it be not within the power of the said car company to make such delivery, then, as your orator is advised and therefore avers, it is its duty to deliver an equivalent therefor, and to account for the profits which it has derived under and by reason of the property delivered to it under said agreement.
>
> "It is further the duty of said car company, as your orator is advised and therefore avers, to fully account for all profits which it derived from the use of said property.
>
> "10. Your orator is advised and therefore avers that the said car company now holds all contracts for transportation made by it with railroad companies with whom there were transportation contracts with your orator at the time of said agreement of the 17th of February, 1870, IN TRUST for your orator, with

a duty to *account for the profits* derived therefrom.

"Being without an adequate remedy at law, your orator prays equitable relief as follows:

"(*a.*) An account by the said car company of all the profits which it has derived *since the making of said agreement of the 17th of February*, 1870, *by the use of the property*, transferred to it under said agreement by your orator.

"(*b.*) A decree that the amount found due by said accountant for said use of said property shall be paid over to your orator.

"(*c.*) A decree that the said car company is the TRUSTEE for your orator for all contracts for transportation, whether original, new or renewals, held by it with railroad companies with which there were contracts for transportation with your orator *at the time of making said agreement* of the 17th of February, 1870.

"(*d.*) A decree ordering the said car company to pay to your orator all such sums as shall be due it by said company *as such trustee*, and that it shall, in the *future*, from time to time, account for the sums which shall be due by reason of future operations under said contracts.

"(*e.*) Discovery and an account by the said car company of its use and disposition of the property turned over to it by your orator, and a delivery by said car company to your orator of all such property in proper order and condition, or if this cannot be done, a decree that the value thereof shall be paid to your orator, and that all sums derived from said property shall be paid over.

"(*f.*) General relief."

To this cross-bill three demurrers were filed (Rec., pp. 558–561).

The *first* is a general demurrer, asserting that the cross-bill was filed contrary to the practice of the Court and under circumstances in which a cross-bill is not allowed; and also that it appeared that under it the Court had no jurisdiction. Unless technically

supported as a cross-bill, it would stand as an original bill, and under an original bill the Courts of the United States would have no jurisdiction of the parties.

The *second* demurrer related to that portion of the cross-bill which prayed a decree that the cross-defendant was *a trustee* of all the above mentioned contracts for transportation, whether original, new or renewals; and for a further decree for the payment of such sums as should be due from it *as such trustee*, and that it should, in the *future*, from *time to time account as such trustee*.

The *third* demurrer related to that part of the cross-bill praying an accounting of all the profits derived *since the making of the lease* of February, 1870, *by the use* of the property transferred under said lease.

All these demurrers were overruled by the Court, with leave, however, to present the questions again on final hearing.

The Answer.

The answer of the Pullman Company, the cross-defendant, admitted the delivery to it of the property mentioned in said lease and its schedules, but averred that all the said property was delivered and received in pursuance of said lease, and *to be used in promoting the purposes* of said lease, and not otherwise. It averred that said sleeping cars were taken only incidentally and as a part of a *primary purpose* of the contract to transfer to the Pullman Company all the assets and the entire business of the Central Transportation Company; that its purpose and inception was in the wish of the Pennsylvania Railroad Company to substitute upon its lines the Pullman service: *first*, because of the connections of that service over the principal Southern and Western roads and to the Pacific Coast; and, *secondly*, because the cars and service of the Transportation Company were un-

satisfactory to the traveling public and the Pennsylvania Railroad Company, and that company had been informed by agents of the Union and Central Pacific roads that the Transportation Company's cars were diverting travel from the Pennsylvania system to competing lines using Pullman cars.*

It showed that all of said railway contracts had expired by lapse of time or otherwise; that none of them reserved any right of renewal to the Central Company, and that all the patent rights had expired. It furnished statements of the use, value and disposition of the railway cars, and the extent to which they had been used up in the conduct of the business; averred that during that time it had paid, as compensation, to the cross complainant the sum of $3,960,000; that it was at all times the duty of the cross-complainant, said lease being illegal and void, to resume possession of its property and business, or so much of it as continued in existence, and particularly to have accepted the same when offered to be restored in June, 1886; that from that date no obstacle had been placed in the way of its possession, and that it should be deemed to have been in the control and possession thereof; that it had asked the Court to take possession of said property by a receiver, but that said cross-complainant making objection thereto, the Court had refused to do so. It admitted that in the month of June, 1886, it gave notice of an election to determine said lease, and thereupon made to the cross-complainant the tender set forth in "Exhibit F" to the original bill. It averred that said tender was made in good faith, but was refused by said cross complainant; and that *since said refusal*, and *before the filing of this cross-bill*, it, the complainant in the original bill in which this tender was set forth, abandoned its said bill of complaint and moved for leave to dismiss the same. It submitted that the rule which precludes the grant-

* A portion of the testimony upon this subject is shown in the note on page 88 *post*.

ing by any court of equity or of law of affirmative relief upon a contract for violation of public policy, forbade the Circuit Court to allow such affirmative relief upon this cross-bill, and that the order of the Court refusing the motion of the original complainant to dismiss its bill, and the order granting leave to file the cross-bill, did give the aid of that Court to one party and against the other under a contract which the Court itself had held obnoxious to public policy and totally void between the parties. The cross-defendant denied that it owed any duty to the cross-complainant, or that it held any transportation contracts or other property *in trust* therefor, with any duty to account for profits derived thereunder. It averred further that the alleged title of the cross-complainant, as presented by said cross-bill, to the property therein mentioned was a *strictly legal title* and was the proper subject matter of an action at law if any right of action at all existed therefor, and that any claim to profits or earnings as asserted by said cross-bill, if it existed, was merely an incident to said legal title and equally the subject matter of an action at law. It insisted that if any such right as that asserted by the cross-bill existed in said cross-complainant, the remedy therefor was at law, and the *answer expressly asserted* the claim that, under the *Constitution of the United States*, and the acts of Congress, the court of equity had no jurisdiction thereof; and the answer also set forth the Statute of Limitations of the State of Pennsylvania.

Testimony having been taken, the cause came on for final hearing, and on December 18, 1894, the Court, by BUTLER, *J.*, filed its opinion shown in the Record at pages 745 and 1126, whereby it held that the cross defendant must account to the cross complainant for the value of the property delivered under the lease "*when received*, together with its *earnings since*, less the amount paid as rent." The Court at the same time referred the cause to a Master, for the purpose of ascertaining these

amounts, and the report of the Master is shown in the Record, pages 1133 to 1183.

The Master's Report.

The Master appraised the value in January, 1870, of the property claimed to have been then transferred under the lease, at $2,552,000, taken to be the *aggregate market value at that time of all the shares* of the capital stock of the Central Company.

On the hearing before the Master the Pullman Company reported *all earnings made by operation of the lines embraced in the Central Company's contract during the time of duration of those contracts*, whether made by its own cars or by the Central Company's cars, and all earnings *made by the latter cars, anywhere and at any time* (Rec., p. 866). In doing so *it conformed fully, as it claimed and believed, to the order of the Court.*

There was difference of view as to the scope of the order of reference, and the Pullman Company objected to *reporting business not embraced* as it was advised *in the order* of the Court; but *it declared its readiness* to conform to any order on the subject which the Court might make, and *did in fact answer every call made by the Master at the hearing.*

It would have been a simple, and we think usual procedure, for the Master to report the case to the Court for instructions, or for the counsel of cross-complainant to apply to the Court for explanation or enlargement of the order; but no such report or application was made.

Certain of the Central Company's contracts with railways were expressed to run "*during the continuance of the incorporation*" (Rec., p. 1144) of that company. That company was, *when these contracts were made*, incorporated under a general law of Pennsylvania for twenty years, expiring December 30, 1882 (Rec., p. 1135). In 1870 a special act of the Legislature of Pennsylvania extended the duration of that charter for ninety nine years (Rec., p.

532), and added to the franchises and to the scope of the business of the company; and it was claimed by the cross-complainant that *this act operated to extend correspondingly the duration of such contracts,* all of which had been made long before with the various railway companies.

It was insisted by the Pullman Company that, under the provision of the Constitution of the United States which prohibits the impairment of the obligation of contracts by State legislation, this act of the Legislature could not thus modify or extend *an existing contract*, and that such contracts expired with the period of corporate life of the Central Transportation Company as fixed by its charter at the time they were made.

The Master reported to the Court that "an accurate ascertainment of the earnings without further evidence than that which had been produced before him was impossible" (Rec., p. 1177). The Pullman Company insisted that a just state ment of earnings had been made conforming to the order of the Court, and that upon such statement it appeared that the *amount paid as rental* had *exceeded the earnings* during the fifteen years from 1870 to 1885 by more than $1,660,000, leaving that amount to be credited in 1885, under the order of the Court, upon the valuation of the Central Transportation Company property made by the Master. The Master, nevertheless, while stating that this table presented a nearer approach to a solution of the question than any of the tables above alluded to, considered that it should be subject to certain corrections, and said (Rec., p. 1182):

> "If the corrections suggested by the Master should be deemed proper, additional testimony is requisite. *It would be idle to speculate upon the result* of such testimony when adduced. Until further testimony is presented *the Master cannot ascertain* and report *whether or not* the amount received as earnings during the pendency of the lease *ex-*

ceed or are less than the amount paid as rental.

"Counsel for the Central Transportation Company have contended that the earnings largely exceeded the rental, and whilst not abandoning their claim as to such excess, have stated their willingness to waive it rather than to be subjected to the delay incident to the production of additional proof. The Master has, however, *been unable to accept their estimate of earnings* for reasons heretofore stated. They have also called his attention to various errors in the calculations submitted by the Pullman Company. *They have not, however, at any time, made a call on the Pullman Company for the production of its books.* The Pullman Company has failed, though requested by the Master, to furnish him with such information as would, he believes, have enabled him to state an account. In so doing *it has doubtless conformed to what its counsel has advised as the true interpretation of the order of reference,* but the testimony furnished has not been sufficient to make it possible for the Master to comply with the directions of the Court as they are understood by him, and he *accordingly* is compelled to report that he has not as yet been furnished with sufficient data to *enable him to ascertain the difference* between the rentals paid to the Central Transportation Company from January 1, 1870, to January 1, 1885, and the receipts derived by the Pullman Company from its use of the property transferred during the period above referred to."

It further appears from the Master's report (Rec., p. 1180) that a claim for very large earnings of the Pullman Company, chiefly "earned by Pullman cars and by the use of Pullman capital," was made by the counsel for the cross complainant. While professedly deduced from the statements and accounts furnished by the Pullman Company, the conclusion that they belonged to the cross-complainant was entirely disapproved by the Master, and in dis-

cussing that claim the Master said (Rec., pp. 1180–81):

> "This measure of value does not appear to be sound. The analytical statements not only *refer to another territory*, but the large profits shown therein by the counsel for the Central Transportation Company *are mainly due* to the fact that the operation of sleeping cars *over such territory* was an enormously profitable business, and out of the profits thus derived the Pullman Company's share is restricted to six per cent. for interest and six per cent. for depreciation, and *the residue of the profit is credited* to the Central Transportation Company, *notwithstanding the fact that the greater portion of it was earned by Pullman cars and by the use of Pullman capital.*
>
> "The Central Transportation Company's claim is also in part made up of earnings derived from the Central division *after the assigned contracts had expired.* These earnings, it is said, the Central Transportation Company is entitled to BECAUSE the value of the Pennsylvania Railroad Company's contract, which ran for *fifteen years*, was presumably *the value of the contracts with that system* which the Central Transportation Company contemporaneously *assigned* to the Pullman Company.
>
> "In this connection it must be remembered that what the Central Transportation Company parted with was not only its contract with the Pennsylvania Railroad Company and its leased lines, but certain other contracts as well, and also all of its other property, and *that what* the Pennsylvania Railroad *desired to receive* from the Pullman Company at the time in question was *not only Pullman cars and service, but Pullman Company's connections as well.*
>
> "For the reasons above stated, the Pennsylvania Railroad Company was willing and desirous to make a contract with the Pullman Company in 1870, and in order that this should be effected it was necessary that there should be an understanding reached as to its outstanding contracts with the Central Trans-

> portation Company. But it does not follow that the substituted contract and the assigned contract were equal in value. Without the assignment the substituted contract could not have been made. It was an element in the conduct of the negotiations; *but it was not property received by the Pullman Company from the Central Transportation Company*, and it is only as to such property that the inquiry as to earnings, as understood by the Master, is directed."

On the coming in of the report exceptions were filed by the cross-defendant, which were argued and are shown in the Record at pages 1185 and 1188. All were dismissed, however.

Certain exceptions were also filed by the counsel for the cross-complainant (Rec., p. 1187), and these were also *nominally* dismissed; but the suggestions they contained were at once adopted by the Court and embodied in its opinion and judgment, which are shown at page 1194 of the Record.

There the Court declared that *the burden was on* the cross-defendant to *show the earnings* and *that they were less than the rental;* that the Pullman Company was in default for not furnishing evidence *not called for by the order of the Court*, and that *all intendments were accordingly adverse to it*, and it *would therefore be assumed* that the earnings were at least equal to the rent, *or the Pullman Company would have shown the contrary.* Then appeared for the first time the declaration of the Court that the Pullman Company was *not liable* for the value of the property in 1870, when it was received, *as had been held* in the order of reference directing the Master to find the value at that date, *but for the value in* 1885, when, it held, the lease was disaffirmed; and that the inquiry *had been directed* to the value in 1870 *for the purpose* of ascertaining *thereby* the value in 1885.

No further inquiry as to earnings was directed, nor any elucidation given of the order to the Master,

and *no inquiry was ever directed* as to the value of the so-called "property" in 1885, nor any opportunity given to show its condition or its value at that date, or the aggregate market value *then* of the total number of shares of the capital stock.

The radical difference between the theory and principles of the judgment of the Court announced in December, 1894, after the final hearing and *upon the reference to the Master*, and those to which the Court changed on January 13, 1896, *after the Master's report*, are shown by comparison of the opinions:

Opinion and Order of Reference to Master December 18, 1894 (*Record, p.* 1132).

"The property must therefore be returned or paid for. The former is impossible. The property has substantially disappeared. It has become incorporated with the business and property of the plaintiff and cannot be separated. Compensation must therefore be made. What, then, is the measure of compensation? *Clearly, we think the value of the property when received, together with its earnings since, less the amount paid as rent.* In ascertaining the value the annual rental may be considered, but it does not afford a conclusive nor entirely safe measure of value, because the unlawful consideration (that the Central Company would abstain from exercising

Opinion and Order of January 13, 1896, *upon Master's Report* (*Record, p.* 1195).

"We think the inference that the earnings were equal to the rent paid is reasonable, if not unavoidable. *If they were not*, the *Pullman Company*, having possession of the evidence, *should have shown it.* The testimony produced by the transportation company was quite sufficient to put the burden on the other side. The failure to respond to the Master's request greatly strengthens the inference. It is urged, however, that if the Pullman Company is charged with the property as of 1870, it must be treated thereafter as entitled to the earnings and be credited with the amount subsequently paid as rent. Of course if it is treated as

its franchises) entered into it. For the same reason the earnings cannot be measured by the rent. The value of the property and earnings must be ascertained from a careful examination of the property, the business, and its earnings *at the time when they passed into plaintiff's hands* and subsequently. It is not their value to the plaintiff we want, but to the defendant; in effect, *what it lost by parting* with them. The value of both property and earnings may have been worth more to the plaintiff with the business united, but this cannot be considered.

"*For the purpose of ascertaining these values* the Court refers the subject to Theodore M. Eting, Esq., as Master, with direction to report within sixty days (from the testimony taken and such further as may be produced).

From Master's Report (*Record, p.* 1171).

"XII. Passing to the consideration of the main question raised in the present reference, viz., what the Central Transportation Company lost by the transfer of its property to the Pullman Company, the measure of damages as determined by the Court re-

owner from that date, it could not justly be held accountable for earnings thereafter and would be liable only for the value, with interest from that date, subject to the credit stated. But it is not so treated, and cannot be, because it would not correspond with the facts and would be unjust. The *ownership* of the property remained in the transportation company, the Pullman Company taking possession and *holding it for* the former, paying a stipulated price for its use up to 1885. The lease under which the parties acted was void, but this did not render the acts void. They chose to and did treat it as valid, and to the extent that its provisions were executed the Court will not interfere, except to prevent manifest injustice. Up to 1885 they were executed; the Pullman Company got and enjoyed the use and paid the stipulated price. Inasmuch, however, as the enjoyment of the use was granted and the rent was paid therefor in contemplation of a longer continuance of the arrangement, it was supposed that the rent might fall short of a just compensation for the use or be in excess of such compensation. This was, therefore,

quires the Master to ascertain:

"(1.) What was the value to the Central Transportation Company in 1870 of the property transferred?

"(2.) What was earned by the Pullman Company between January 1st, 1870, and January 1st, 1885, from the use of the property transferred?

"(3.) The difference between the amount so received by the Pullman Company and the rental paid by it to the Central Transportation Company for the above period.

"(4.) The total amount to be paid to the Pullman Company, as of January 1st, 1885, deduced as above, together with interest thereon from January 1st, 1885, to date of final decree.

* * * *

"The order of reference as *understood by the Master* limits his authority to the ascertainment of the extent or amount of the property received and its *value when recived*, together with its earnings since, less the amount paid as rent. General directions as to the course to be pursued by the Master in arriving at the above valuation were stated by the Court in its opinion. Whether in connection with this valuation there is to be a separate ap- considered a proper subject of inquiry. It is plain, however, that *the parties* substantially *intended* that *the use and the rent should balance each other*, and in the absence of proof to the contrary *it should be presumed* they did. It was not, therefore, until 1885, when the Pullman Company ceased to pay rent and *repueiated the arrangemenj* that it *became* practically *responsible* for a return of the property or *the paywent of its value*. Of course it may be said that such responsibility actually existed from the beginning, because the arrangement was unlawful. The parties, how ever, did not so understand and treated it as lawful, and to the extent of what they thus did in good faith their acts will not be disturbed. *It is too late now to treat the responsibility asexisting in* 1870 *and make settlement accordingly*. It would not only be in conflict with the facts, but would work manifest and very great injustice. It would enable the Pullman Company to set up the statute of limitations, as it did before the Master, and if this failed, then to take the property for less than it agreed to pay and did pay (interest considered) substantially as compensa-

praisal of each form of property transferred or the appraisal of the plant as a going concern, is a question which is left open, and which, therefore, in the first instance, must be decided by the Master."

tion for fifteen years of its use. It is *the value of the property at the time it should have been returned* that the Pullman Company should be charged with. *Inasmuch as* this value would be difficult of ascertainment by the transportation company except by reference to the value in 1870, IT WAS CONSIDERED *proper to direct the inquiry to the latter date.* Presumably the value increased; the evidence fully justifies the presumption. *If it decreased*, the Pullman Company could and *should have shown it. The Master's valuation in* 1870 *is, therefore, to be taken as the value in* 1885, *when the property should have been returned.* The payment of this sum, with interest from January 1st, 1885, seems necessary to a just settlement, *treating the value of the use* and the *rents paid* prior to that date as balancing each other. A decree may be prepared accordingly, dismissingthe exceptions and *confirming the report.*"

It was not clear by what authority the Court fixed upon January, 1885, as the date when the capital value of the "property" should be ascertained and interest thereon should commence. But in its opinion of January 13, 1896, it stated the ground upon which it proceeded as follows:

> "It was not, therefore, until 1885, when the Pullman Company *ceased to pay rent and repudiated* the arrangement that it became *practically responsible for a return* of the property or the *payment of its value.* * * * It is the value of the property *at the time it should have been returned* that the Pullman Company should be charged with. * * * The Master's valuation in 1870 is, therefore, to be taken as the value in 1885, when the property should have been returned. The payment of this sum, with interest from January 1, 1885, seems necessary to a just settlement. * * *"

But here is a singular error of fact. If anything is shown in this record it is that the lease was *not* repudiated, and payment of rental under it refused in January, 1885. If rent actually ceased then to be paid, it was solely because the Pullman Company contended that the rental *had been modified* under the provisions of that section "EIGHTH" of the lease which was considered and construed by this Court in the case reported in 139 U. S., page 62. The Pullman Company contended that the reduced amount had become, under the lease itself, *the contract rental to be paid.* The lease was not repudiated until the plea of *ultra vires*, &c., was filed in the case reported in 139 U. S., p. 25, and that suit was not begun until September 21st, 1886, and the plea was filed long afterward. This original bill, which supported the lease, was filed January 25th, 1887. The record shows that the lease was *not* repudiated and payment of rent stopped for that reason on January 1st, 1885. On the contrary, the records in this Court show that for *about two years after that date, the parties were acting under the lease;* the only controversy being as to the *amount* of the rental.

However, by this process the $3,960,000 paid by the Pullman Company was expunged. This sum under any degree of conformity to the rulings of the Supreme Court and to the opinion and directions of the Court below to the Master, and to the conclu-

sions of the Master must have greatly *exceeded* the *earnings from the use of* Central Transportation Company's *property;* and the value of the so-called "property" was arbitrarily assumed *to have increased* during that period of fifteen years, during which the patents and railway contracts of which it chiefly consisted all expired and ceased to exist, and the tangible property, such as the original cars, had been largely used up and consumed in the ordinary operation of the service.

But by this new shuffling of the facts and elements of the case these expired patents and contracts and worn-out cars are made to reappear in the capital valuation with which we are charged, as though they were unimpaired in their original integrity, and the $3,960,000 paid to the cross-complainant, to disappear entirely from the reckoning. But the astonishing disclosure embraced in the following language, namely:

> "It is the value of the property at the time it should have been returned that the Pullman Company should be charged with. *Inasmuch as* this value would be difficult of ascertainment by the Transportation Company *except by reference* to the value in 1870, it *was considered* proper to *direct the inquiry to the latter date.*"

is altogether insufficient to cover the absolute change in the position and attitude of the Court or obscure the inconsistency between the opinion and order of December 18, 1894, and that of January 13, 1896.

The so-called "plant" or "business" of the Transportation Company was founded *not* on substantial and permanent property like a manufacturing establishment or a railway road-bed and its equivalent, but merely on certain patent rights and sleeping car contracts with railway companies. The contracts, sixteen in number, were chiefly with the Baltimore and Ohio and Pennsylvania systems of railways. They were all of moderate duration and

were *without any right of renewal.* In fact, the operation of the service on the Baltimore and Ohio system and on the Ohio and Mississippi lines had passed out altogether by Noxember 1, 1880 (Rec., p. 459), and when in January, 1885, the Pennsylvania contract, then existing with the Pullman Company, expired and renewal was refused, substantially the last contract *claimed* to be comprised in this "plant" was gone.

The physical and tangible property consisted of a number of sleeping cars and their equipment, most of them old and worn out, and all of them of antiquated and obsolete pattern and construction, which the railways were condemning and forcing off their lines. The patents were of no value or use except to protect the use of the old cars already built under them; no others were ever constructed under them. The "business" in 1870 was such as depended on these contracts and the use of these cars.

The Court by its order of December 18th, 1894, held that the Pullman Company "took possession" under the lease "of the property and business transferred;" that the Master should ascertain what value the Transportation Company "lost by parting with them," and that the Pullman Company must account for the value of the property *when received* together with its earnings since, less the payments made as rent. For this value the master assumed to take the market value of the total stock in 1870. Subsequently the Court, in January, 1896, held that the liability was *not* for value of property *when received* but for its value when on *repudiation of the lease* it should have been returned, for which date it fixed January 1st, 1885.

Decree was rendered on the cross-bill for the estimated value of the so-called "*plant*" or "*property*"—irrespective of any details—of the Central Transportation Company in 1870, assumed arbitrarily and without inquiry or evidence to be its value also in 1885, and for interest thereon from that

date, with an appropriation in satisfaction of previous earnings of the payments of rent, which amounted without interest to nearly $4,000,000. From that decree on the cross-bill this appeal is taken.

The assignments of error are of three classes: *First*, those by which are denied the right of the cross complainant to relief in this proceeding or in the court of equity; *second*, those by which are denied the right to affirmative relief in any court of law or equity because of the character of the contract of lease which was held void by this court; and *third*, those which upon other grounds draw in question the correctness of the existing decree.

SPECIFICATION OF ERRORS.

First.

The Court erred in refusing to dismiss the original bill on motion of the complainant. Page 33 *post.*

This includes the assignments of error numbers 1 and 2.

Second.

The Court erred in allowing the cross-bill to be filed in the cause. Page 40 *post.*

This includes the assignments of error numbers 3 and 4.

Third.

The Court erred in not holding that the subject-matter of said cross-bill was the proper subject-matter of action at law and of trial at law and by jury only, both under the provisions of the seventh amendment of the Constitution of the United States and of Section 723 of the Revised Statutes of the United States. Page 44 *post.*

This includes the assignments of error numbers 7 and 8.

FOURTH.

The Court erred in not sustaining the three several demurrers to the cross-bill. Page 53 *post.*

This is the fifth assignment of error.

FIFTH.

The Court erred in holding the cross-complainant entitled, under the circumstances stated in the cross-bill, to any affirmative intervention of the Court on its behalf relating to property transferred for the purposes of the illegal lease, or to earnings made by the use thereof. Page 55 *post.*

This includes the tenth and twenty-seventh assignments of error.

SIXTH.

The Court erred in its determination of what constituted "the property" transferred under the lease of 1870 *for which it held compensation must be made; and the value of the total capital stock estimated by market price of certain share was no proper measure of the value of such property.* Page 81 *post.*

This involves consideration of the assignments of error Nos. 16 and 17, together with Nos. 11, 12, 13, 14, 26, 27 and 28.

SEVENTH.

It was error in the Court below to hold that the cross-complainant was entitled, under any circumstances or conditions, to recover earnings, and in not holding that the obligation, if any, of the cross-defendant was limited to interest instead of earnings during the period preceding the disaffirmance of the lease. Page 117 *post.*

This involves the subject-matter of the assignments of error Nos. 5, 18 and 22.

EIGHTH.

The Court erred in this: that, while holding that it would treat the void lease as executed by the acts done by the parties "up to 1885," *when it alleged the lease was disaffirmed, and that "to the extent its provisions were executed the Court would not interfere," it confined the rule to the mere receipt of earnings and to the payment of rental, and did not hold that other provisions of the lease were equally executed, and were not to be disturbed, namely, the act of transfer and delivery of property under the lease, and the expiration and extinction of railway contracts and patents so that they had no value in* 1885. Page 129 *post.*

This includes the assignment of error No. 27.

NINTH.

In holding the lease executed up to 1885 *by the acts of the parties, the Court erred in not holding the rental reserved and paid to have been an agreed and conclusive valuation by the parties, not merely of the* USE *of all* PROPERTY *for that period, but* ALSO *of the unlawful covenant of the lessor not to exercise its franchises; and the Court erred, therefore, in not holding that a part only of the rental paid should represent and offset the earnings under the lease, and that "the chief consideration for the sums paid" was the cross-complainant's covenant to abandon its business, and that the "chief" portion of the sums paid as rental should accordingly be otherwise applied to the credit of the cross-defendant.* Page 134 *post.*

This includes the assignments of error Nos. 19 and 28.

TENTH.

The Court erred, in its decree, by adopting the valuation of property made by the Master as of 1870, *based on market value of the total capital stock as the measure of value of the Central Company's property in the hands of the cross-defendant in* 1885, *without any reference to a Master to make the inquiry, or other opportunity given the cross-defendant to show the actual value of said property or the actual market value of said capital stock in* 1885. Page 135 *post.*

This is the 25th, 26th and 29th assignments of error.

ELEVENTH.

The Court erred in confirming the finding of the Master that certain railway contracts belonging to the Central Company, originally made to continue "during the continuance of the incorporation" of that company, were continued in force and extended for ninety-nine years by force of an act of the Legislature of the State of Pennsylvania of the 9th of February, A. D. 1870, *by which said Central Company was given a corporate life for another period from the expiration of its then existing charter; and the Court erred in not upholding the claim of the cross-defendant that such effect of said legislative act was in conflict with and forbidden by Article I., Section* 10, *of the Constitution of the United States, which prohibits on the part of the States any enactment impairing the obligation of contracts.* Page 139 *post.*

This includes the assignments of error No. 23.

TWELFTH.

The Court erred in holding the cross-defendant to have been derelict in that it had refused or neglected to produce to the Master in evidence all earnings called for by the order of reference; and in holding that the cross-defendant had failed or refused to disclose earnings called for by the Master under authority of said order of reference; and in assuming arbitrarily that the burden of proof was upon the cross-defendant to show that the earnings were less than the rental paid; that the parties to the lease intended that the use and rent should balance each other, and that, in the absence of proof to the contrary, it should be presumed they did. Page 142, *post.*

This is the substance of the assignments of error Nos. 5, 22 and 24.

The assignments of error are shown at page 1200 of the Record, and the foregoing specifications indicate those to which we wish specially to call the attention of the Court.

First.

The Court erred in refusing to dismiss the original bill on motion of the complainant.

It seems to be *established in the law of this Court* that it was the *absolute right* of the complainant at the stage when that motion was made, to dismiss the original bill, and that none of the conditions existed under which leave for such dismissal might properly be withheld.

The "general rule" of the "*right*" of the complainant in an original bill, at any time, upon payment of costs, to dismiss his bill, and *the exception*

that may be allowed in this Court to that rule, are stated in *C. & A. R. R. Co.* vs. *Union Rolling Mill Co.*, 109 U. S., 713. The Court said:

> "It may be conceded that when an original bill is dismissed before final hearing a cross-bill filed by a defendant falls with it. It may also be conceded that, *as a general rule*, a complainant in an original bill *has the right at any time*, upon payment of costs, to dismiss his bill. But this latter rule is subject to a *distinct and well settled* exception, namely, that *after a decree*, whether final or interlocutory, has been made, *by which the rights of a party defendant have been adjudicated*, or such *proceedings have been taken as entitle* the defendant *to a decree*, the complainant will not be allowed to dismiss his bill without the consent of the defendant."

It is the general *rule*, therefore, that the complainant *has the right at any time* to dismiss his bill, and the *exception* to the rule is "*distinct and well settled*," and it is made perfectly unambiguous in the language of this Court. Under that clear statement this case furnishes none of the conditions which make exception to the rule, and under which the Court may lawfully retain a bill against the will of the complainant; on the contrary, it presents a situation where the rule establishes the right to dismiss as "well nigh absolute" (*Am., &c., Co.* vs. *Celluloid Mfg. Co.*, 32 Fed. Rep., 809).

In the exercise of actual power a judge may wrongfully refuse dismissal of a bill and hold in court a reluctant complainant, who wishes to abandon his suit because the situation has changed and his purpose has ceased to exist. Such action has been made effective here; but the question is of some gravity whether the conditions under which the exercise of such force is permitted were regarded; and whether the regulations imposed by the authority of this Court and the established procedure of the Court of Chancery were observed.

The inaccuracy of the Court below in its statement of (49 Fed. Rep., 262; Rec., p. 553) the rule by which it should have been governed when refusing leave for dismissal of this bill seems certain. The Court said:

> "The propriety of allowing discontinuances in equity *depends upon whether defendants may be prejudiced* thereby. A *decree or decretal order entered* is usually a conclusive answer to the application. Here *not only was such an order entered*, but it now appears that the proceeding, or a similar independent one commenced by himself, is the defendant's only means of enforcing his rights. * * *"

It is *not* the mere fact that a defendant *may be prejudiced*, or that "a decree or decretal order" of *some sort* has been entered in the cause which "is usually a conclusive answer to the application" to dismiss voluntarily, nor does it seem ever to have been so held elsewhere. The *kind of* prejudice involved, and the *kind* of decree, final or interlocutory which between the complainant and defendant make *the exception* to the rule are specified *plainly enough* in the above statement of this Court, and are put beyond the range of mistake in the authorities which it cites in the above case of *C. & A. R. R. Co.* vs. *Union, &c., Mill Co.*, 109 U. S., 713.

Thus, in *Cooper* vs. *Lewis*, 2 Ph. Ch., 181, the Lord Chancellor said:

> "The plaintiff is allowed to dismiss his bill on the assumption that it leaves the defendant in the same position as he would have stood if the suit had not been instituted; it is not so where there has *been a proceeding* in the cause *which has given* the defendant *a right against the plaintiff.*"

In *Bank* vs. *Rose*, 1 Rich Eq. (S. C.), 294, it was said:

> "But whenever, *in the progress of a cause*, the defendant *entitles himself to a decree*,

> either against a complainant or a co-defendant, and the dismissal would put him to the expense and trouble of bringing a new suit or making new proofs, such dismissal will not be permitted."

This statement in *Bank* vs. *Rose* is cited and approved in 55 Fed. Rep., 572. The defendant must *first* in the progress of the cause *have entitled himself to a decree for the establishment of some right.*

In *Watt* vs. *Crawford*, 11 Paige, 472, the Chancellor said:

> "Before any decree or decretal order has been made in a suit in chancery, *by which a defendant therein has acquired rights*, the complainant is at liberty to dismiss his bill upon payment of costs; but *after a decree has been made by which a defendant has acquired rights*, either as against a complainant or against a co-defendant in the suit, the complainant's bill cannot be dismissed without destroying those rights."

In *Connor* vs. *Drake*, 1 Ohio St., 170, the Court said:

> "After a defendant has been put to trouble in making his defense, if *in the progress of the case rights have been manifested that he is entitled to claim*, and which are valuable to him, it would be unjust to deprive him of them merely because the complainant might come to the conclusion that it would be for his interests to dismiss his bill."

In this case of *Connor* vs. *Drake*, there had been a *decree for specific performance of a contract* on a bill filed for that purpose, and a *subsequent award* of appraisers or arbitrators *in execution of the decree. The defendant claimed* and insisted upon the *benefit of that decree and of that award* which the complainant sought to avoid by dismissing his bill.

The foregoing are the *illustrations* by which this

Court defines the exception which it allows to the otherwise uniform rule. The decree, order or proceeding which justifies the exception must be one occurring in the progress of the case *by which some substantial right has been established to the advantage of the defendant*, the benefit of which he would lose if the bill were dismissed. All these illustrations, used by this Court, come within the limits of the *rule* and of the *exception* stated by it. In the principal case (*C. & A. R. R.* vs. *Rolling Mill Co.*, *supra*), several defendants had *independent* rights in the subject matter of the controversy, and one defendant having, by answer set up his particular right, had also filed a cross-bill to enforce it. The cases proceeded and were heard together, and an interlocutory decree entered *to enforce the right thus set up*. The interlocutory decree *had been* entered *establishing the lien* of the Rolling Mill Company *as claimed in its answer and its cross-bill*. The motion to dismiss the original bill came "*after this* proceeding, and when the controversy between the parties had practically ended by the interlocutory decree of the Court" (p. 716). It appeared that if the original bill, carrying with it the cross-bill, had been then, after that decree dismissed, the claim of the Rolling Mill Company would be barred by the Statute of Limitations and it would lose the benefit of the *decree* it had already obtained; for the Rolling Mill Company had already *obtained a decree* and thereby established that claim "by a proceeding in the progress of the case," and under a cross-bill which had long before been properly filed.

Carrington vs. *Holly*, 1 Dickens, 281.
R. R. Co. vs. *Hendee*, 27 Fed. Rep., 678.
Glasscock vs. *Brandon*, 12 S. E. Rep., 1102.

Now, *what* "decree or decretal order" had according to the statement of the Court below been ever entered which brought *this* case within the allowed

exception to the rule? What *right* against the complainant had the defendant established or *entitled itself to a decree for* in the progress of this original cause?

There had been no hearing nor any order for hearing of the cause, *nor was it ready* for hearing. No testimony had been taken by the defendant. No decree, "final or interlocutory," had been made which had *adjudicated any right of the defendant*, nor had any *proceedings* been had which *entitled it to a decree* for anything. Nor had any attempt been made to file a cross bill or to claim affirmative relief in any form.

The only "decree or decretal order" ever made in the cause was the interlocutory order by which the defendant *was enjoined from suing* on the lease. No right of the *defendant* to any *affirmative* relief was "manifested" or established by that order; and in *Day* vs. *Snee*, 3 Ves. & B., 170, it was held by Lord ELDON that a preliminary injunction was *not in the nature of* a decretal order.

In fact, the only order ever made in the original cause, namely, the one enjoining the defendant from bringing suits for rental accruing after July, 1886, was one which assumed, necessarily, *the validity* of the lease, for it was *in aid of its provisions*, and to that extent assuredly established no right of the defendant presented by this cross-bill.

One thing is *certain* under the *decisions of this Court:* There *is a period* of time *during which* a complainant *has the right* to dismiss the bill. Now, what had ever occurred to put a bar in this case to that right?

The tenders of the original bill.

The motion for the defendant was "for leave to file a cross-bill, in which they will avail themselves of the tenders of relief made by complainants in their bill."

It has been pretended in some misty way by the

cross-complainant that this cross bill could be made available for holding the complainant in the original bill to the terms of the offers therein contained for the surrender of property transferred in pursuance of the lease, and to the offers of compensation therein contained for such property as no longer existed or for other reasons could not be restored; and this suggestion also seems to have been noticed by the Court below. But no one ever acted on it, and it would be a most anomalous and unprecedented thing if this could possibly be true. Those were offers based on obligations created *by the covenants of the lease*, and were offers of *performance* of those covenants. It was *after* the original bill had been filed that the lease was adjudged in another cause to be void, and that judgment, with its necessary legal consequences, had *supervened* upon these offers or tenders such as they were.

Moreover, these propositions of the original bill had been *expressly rejected* by the *answer* of the defendant filed to that bill.

After such a rejection, once declared, *the election* to that effect by the defendant *could not be recalled* and the propositions subsequently accepted without a new proffer or a new consent on the part of the complainant.

Furthermore, the complainant filed its motion to dismiss its bill *before any suggestion was made* by the defendant of any purpose or willingness to accept the offers of the bill, and *before* any application for leave to file a cross-bill, or the assertion of any claim whatever to affirmative relief or notice of any such purpose on the part of the defendant. Whatever might be the right of the complainant to dismiss its bill without leave of Court, it *had* the *right to withdraw a tender* or anything in the nature of a tender *before it had been accepted* and before any order had been made confirming any right of the defendant thereto, and especially while all the offers of the bill *stood expressly refused.* When leave to file cross-bill was asked, the complainant

had already moved to dismiss its bill, and all its proffers stood abandoned and withdrawn.

Nor did the cross-bill itself attempt to accept them. On the contrary, the cross-bill itself again rejected them and insisted on a different and exaggerated demand. Offers of that character *must be accepted as they are made*, or they are rejected. The wildest extravagance will not pretend that any phrases of the original bill contemplated or intended an offer of what is asked for by the cross-bill.

Second.

The Court erred in allowing the cross-bill to be filed in the cause.

(1.) It seems very obvious that *the original bill furnished* at that stage of the cause *no possible foundation* for a cross-bill. It contained no subject-matter out of which a cross-bill could grow. The original bill set up the election of the complainant to terminate the lease in execution of provisions which the lease itself contained. Its only *equitable* element was its appeal to the court of equity for aid of that court in making a substantial performance of the covenants of that lease relating to the restoration of the demised property in such case of termination. The application was based upon the impossibility of performing those covenants literally according to their terms.

When, under the judgment of this Court, the lease itself was afterward held to be not merely voidable but utterly void in all its provisions, it is obvious that the whole subject-matter of the bill, above stated, was thereby extinguished, and no foundation for equitable relief to the complainant any longer remained. When the Supreme Court had adjudged the lease, to enforce which the

original bill was filed, to be thus void, it put an end to that part of the cause.

Now, if we assume what is claimed by counsel and in the opinion of the Court below, that one purpose of the bill was to *set aside the lease for illegality*, then the judgment of this Court left *only that part of the bill in force*. This is that part to which, for the sake of this cross-bill, such sudden prominence was given.

But it is perfectly clear that a bill in equity filed for such purpose could not be entertained at all by the Court, for conceding the view of the bill taken by the Court below, the case presented was *identical* with that passed upon by this Court in the case of *St. Louis, Vandalia, &c., R. R. Co.* vs. *Terre Haute, &c., R. R. Co.*, 145 U. S. Rep , 393. In that case the Court held that no suit for such a purpose could be maintained; and the language of Mr. Justice GRAY in that case is in every clause applicable to the bill in this case as it is represented in the opinion of the Court below. He said:

> "The *object of this suit* between two railroad corporations, as stated in the amended bill, is to have a contract, by which the plaintiff transferred its railroad and equipment, as well as its franchise to maintain and operate the road, to the defendant for a term of nine hundred and ninety-nine years, *set aside and canceled, as beyond the corporate powers* of one or both of the parties. * * * In short, by this contract, one railroad corporation undertook to transfer its whole railroad and equipment, and its privilege and franchise to maintain and operate the road to another railroad corporation for a term of nine hundred and ninety-nine years, in consideration of the payment from time to time by the latter to the former of a certain portion of the gross receipts. This was, in substance and effect, a lease of the railroad and franchise for a term of almost a thousand years, and was a contract which neither corporation had the lawful power to enter into, unless expressly authorized by the State which created it, and

which, if beyond the scope of the lawful powers of either corporation, was unlawful and wholly void, could not be ratified or validated by either or both, *and would support no action or suit by either* against the other. *Thomas* vs. *Railroad Co.*, 101 U. S., 71; *Pennsylvania Railroad* vs. *St. Louis, Alton & Terre Haute Railroad*, 118 U. S. 290, 630; *Oregon Railway* vs. *Oregonian Railway*, 130 U. S., 1; *Central Transportation Company* vs. *Pullman's Car Company*, 139 U. S., 24. Upon the question whether this contract was *ultra vires* of either corporation this case cannot be distinguished in principle from *Pennsylvania Railroad* vs. *St. Louis, Alton & Terre Haute Railroad*, above cited. * * * It may, therefore, be assumed, as contended by the plaintiff, that the contract in question was *ultra vires* of the defendant, and, therefore, did not bind either party, and neither party could have maintained a suit upon it, at law or in equity, against the other. *It does not, however, follow that this suit to set aside and cancel the contract can be maintained.* If it can it is somewhat remarkable that, in the repeated and full discussion which the doctrine of *ultra vires* has undergone in the English courts within the last fifty years, no attempt has been made to bring a suit like this * * * The general rule in equity, as at law, is *in pari delicto potior est conditio defendentis*, and, therefore, *neither party to an illegal contract will be aided by the Court, whether to enforce it or to set it aside.* * * * If, as the plaintiff contends, the contract was also beyond its own corporate powers, it is certainly in no better position. In either aspect of the case the plaintiff was *in pari delicto* with the defendant. The *invalidity* of the contract, in view of the laws of which *both parties were bound to take notice*, was apparent *on its face.*"

The Court held that *the bill could not be maintained at all*, and affirmed the judgment of the Court below, in which it had been *dismissed on demurrer.*

To the same effect is the declaration of the Supreme Court of Massachusetts, in *Huckins* vs. *Hunt*, 138 Mass., 366.

> "If two persons make an illegal contract, being *in pari delicto*, so long as it remains executory the law will not aid either party to enforce it, but, *so far as it is executed*, the law will not lend its aid to either party *to relieve him from the consequences* of the illegal contract *or to rescind it*."

It follows, therefore, that if the original bill in this cause was in fact what it is claimed to have been, then it was a bill which, *after* the judgment that the lease was *void*, the Court could *no longer entertain for any purpose;* and as its subject-matter was such that it could not be entertained for *equitable relief*, it could not be retained to give support to a cross-bill asserting only claims of purely legal nature.

2. The filing of the so-called cross-bill was improvidently allowed, because it is, in legal effect, not a cross-bill at all but an original bill. It is founded wholly on an assertion of the *legal title to property* consisting of certain railway cars, contracts and money wrongfully in possession of the cross-defendant. Its prayer is for recovery of its possession, or for equivalent compensation, and for the profits derived from its use. All this is the proper and usual subject-matter of recovery in courts of law. The remedy there is adequate and complete; and the Constitution and Act of Congress exclude the jurisdiction of the court of equity. This is a suit for the *recovery of personal property* and the *collection of a money demand* under the *guise of a suit in equity*, and is wholly foreign to the scope of the original bill.

When the lease was held to be void, *so much* of the original bill as prayed *equitable* relief on the footing of its *validity* and asked aid of the Court in

giving effect to its provisions, and in performing its covenants, failed, and the bill could only be dismissed by the Court. So much of the bill as related to the *invalidity* of the lease, presented together with the cross-bill only a subject of *legal* right and title and remedy. The cross-bill, whether as a dependent of the original bill, or separately, had no place because of its subject matter in the Court of Equity, but in any aspect it was an independent and separate suit. Both under the original and cross-bills the Court itself was holden to take notice of this, and to dismiss the bills *sua sponte* (*Lewis* vs. *Cocks*, 23 Wall, 470; *Allen* vs. *Car Co.*, 139 U. S., 662). The so called cross-bill was purely an original bill, and as such the courts of the United States had no jurisdiction of its parties, and the *first demurrer* thereto should have been *sustained on that ground.*

So in *Sample* v. *Barnes*, 14 H., 70, the Supreme Court of the United States held that when the special averments of deception, &c., which were relied upon to make a case of *equitable* cognizance *failed to be proved* the Court of Equity *could proceed no further* on the bill, for *as the case then stood* the remedy, if any, was properly and only at law. Such a bill could not support a cross-bill; and any pretended cross-bill would be in legal effect and construction an original bill; and as such it must present *independently* and *in itself* all the primary supports and equitable qualities of an original bill (*Higgins* v. *McCrea*, 116 U. S., 684, p. 59 *post*).

Third.

The Court erred in not holding that the subject-matter of said cross-bill was the proper subject-matter of action at law, and of trial at law and by

jury only, both under the provisions of the seventh amendment of the Constitution of the United States and of Section 723 of the Revised Statutes of the United States.

Over the *subject-matter of this cross-bill* there is *no jurisdiction in a court of equity.*

The title to the property claimed is legal; is the subject of action at law for the recovery of the property or compensation for it in damages, and is the proper subject-matter of trial at law and by jury *only.*

The right to profits, if it exists, is *an incident to the title*, and must be pursued *in the same jurisdiction.* This applies equally to actions for real or personal property.

Whitehead vs. *Shattuck*, 138 U. S., 151.
Root vs. *Railway Co.*, 105 U. S., 213.
Monk vs. *Harper*, 3 Edw. Ch., 111.

The profits or earnings can be ascertained and proved up in a suit for the recovery of the property or its value. In such case *it must be done there.* Equity has no jurisdiction.

In *The Sultan* vs. *The Providence Tool Co.*, 23 Fed. Rep., 572 BLATCHFORD, *J.*, said:

> " The bill in this case is founded wholly on an *assertion of the legal title* of the plaintiff to the rifles and equipments in question. Its prayer is for a decree that the plaintiff has the title to such property and the right to its possession, and that the defendants have no title to it, or valid lien on it, or right to retain it, and that it be delivered over by the defendants to the plaintiff. A claim of such a character is, in the courts of the United States, under the distinction maintained by the Constitution of the United States between law and equity, and enforced by Section 723 of the Revised Statutes of the United States, the subject of a suit at law, and a plain, adequate and complete remedy is afforded by an action of replevin. * * *

> "The bill prays that the tool company be compelled to specifically perform its undertakings with the plaintiff, and that the defendants be restrained by injunction from setting up any right or title to or lien on the property. But these prayers do not change the attitude of the case. The tool company agreed to make the articles and deliver them to the plaintiff. The plaintiff alleges that the articles have been made and paid for, and that the title to them has passed to the plaintiff. *The case is one of the enforcement of the legal title to chattels in existence*, and has no different legal aspect from what it would have had if the chattels had not been made under a contract, *but had come otherwise into the possession of the tool company from that of the plaintiff*. As to the injunction, that might be asked for in every case of the assertion of a legal title to property by a plaintiff, and thus every case of the kind be made one of equitable cognizance. The bill is not one recognizing a lien and asking to redeem from it. It asserts title and denies any lien, and prays for a delivery of the property. Then it has a second and alternative prayer, that, as to any of the property on which there is a lien, redemption therefrom be allowed. *But the suit is still a replevin suit in the guise of a suit in equity.*"

In *Scott* vs. *Neely*, 140 U. S., 110, the Court denied the jurisdiction in equity, because the defendant has a *constitutional* right to a trial by jury, and also *because of the prohibition* of the Act of Congress to pursue his remedy in such cases in a court of equity. The Court said:

> "All actions which seek to recover specific property, real or personal, with or without damages for its detention, or a money judgment for breach of a simple contract, or as damages for injury to person or property, are legal actions, and *can be brought in the Federal courts only on their law side.*"

In *Buzard* vs. *Houston*, 119 U. S., 352, the Court said:

> "In cases of fraud or mistake, as under any other head of chancery jurisdiction, a Court of the United States will not sustain a bill in equity to obtain only *a decree for the payment of money* by way of damages, when the like amount can be recovered at law in an action sounding in tort or for money had and received."

In this case the decree itself is in form and in fact a mere judgment for money (see Record, p. 1197).

Crane vs. *Lord*, 101 Ill., 46.
Smyth vs. *N. O. Canal, &c., Co.*, 141 U. S. 656.
Murphy vs. *Habut*, 16 Pa. St., 50.
Kunkle's Appeal, 107 Pa. St., 368.
Crampton vs. *Varna Ry.*, L. R., 7 Ch. App., 562.

In the last of the above cases the Lord Chancellor said:

> "I understand that the Master of the Rolls did not refer to the other branches of the argument, and said shortly that *the case was reduced to a money contract*. I believe he was right; and that *this being a money contract*, and not a proper subject *for specific performance*, the Court cannot give relief by way of damages."

The remedy is at law and by the determination of a jury. The objection stands upon the *constitutional* right which excludes the jurisdiction invoked by this cross-bill.

Whatever the form of the proceeding may be, when the court of equity perceives that the subject-matter brought before it is one of the enforcement of a legal title, and of a legal right, it is without jurisdiction of that subject-matter by force of

the Constitution of the United States as well as of the prohibition contained in the Act of Congress.

Parsons vs. *Bedford*, 3 Pet., 433.
Root vs. *Ry.*. 105 U. S., 206-7.
Bennett v. *Butterworth*, 11 How., 674-5.
Kilian vs. *Ebbinghaus*, 110 U. S., 572.
Cates vs. *Allen*, 149 U. S., 451.
Hollins vs. *Brierfield*, 150 U. S., 379.

Legal issues of this character cannot be drawn into chancery by merely inserting in the bill prayers for account or discovery. As said in *The Sultan* vs. *The Providence Tool Co.*, *supra*, such things

> " might be asked for in every case of the " assertion of a legal title to property by a " plaintiff, and thus every case of the kind be " made one of equitable cognizance."

In *Hipp* vs. *Babin*, 19 How., 278, the Court said:

> " Nor can the Court retain the bill, under the impression that a court of chancery is better adapted for the adjustment of the account for rents, profits and improvements. The *rule of the Court is*, that when a suit for the recovery of the possession can be properly brought in a court of equity, and a decree is given, that Court will direct an account *as an incident in the cause.*
>
> " But when a party has *a right to a possession which he can enforce at law*, his right to the rents and profits is also a legal right and *must be enforced in the same jurisdiction.* The instances where bills for an account of rents and profits have been maintained are those in which special grounds have been stated to show that courts of law could not give a plain, adequate and complete remedy. No instances exist where a person who had been successful at law has been allowed to file a bill *for an account of rents and profits during the tortious possession* held against him, *or in which the complexity of the account* has afforded a motive for the interposition of the court of chancery to decide the title and to adjust the account."

In *Root* vs. *Railway Co.*, 105 U. S., 212, 213, the Court quoted the above language, and reasserted the same doctrine, and said:

> " These principles were announced in a case for the recovery of the possession of real estate held adversely, but *they are of general application*, and *embrace, as well*, the case of torts to personalty, and infringements of patent and copyrights."
>
> *Creamer* vs. *Bowers*, 30 Fed. Rep., 185.
> *Washburn, &c., Co.* vs. *Wire Co.*, 41 Fed. Rep., 410.

A bill for an accounting *cannot be maintained without showing affirmatively some other ground* of equity jurisdiction to which the *accounting is incidental.*

> *Hipp* vs. *Babin*, 19 How, 279.
> *Root* vs. *Railway Co.*, 105 U. S. 213.
> *Hunton* vs. *Life Association*, 45 Fed. Rep., 661.
> *Babbott* vs. *Tewksbury*, 46 Fed. Rep., 86.
> *R. R. Co.* vs. *Story*, 17 Conn., 364.
> *Badger* vs. *McNamara*, 123 Mass., 117.
> *Higginbotham* vs. *Hawkins*, L. R., 7 Ch. App., 676.
> *Parsons* vs. *Bedford et al.*, 3 Pet., 433.
> *Root* vs. *Ry. Co.*, *supra*, 206-7.
> *Bennett* vs. *Butterworth*, 11 How., 674-5.

This very question was expressly *decided between these parties* in the Court below on the applications for injunction, above referred to, and on that occasion the rule of the Court upon the subject was stated by Mr. Justice BRADLEY in the above cited opinion. The nature of the account that must be taken was urged as a principal ground of the necessity for such an injunction. The defense to those suits rested upon the proposition that

the earnings made by the operation of the service under that lease had fallen below the sum of $264,000 per year, and that thereby the condition had occurred under which the defendant had been entitled to terminate the lease, and that it had done so. The Central Transportation Company at all times *then insisted* that the issues were such as are properly determinable *only on the common law side of* the Court (Rec., p. 63), while the necessity of a court of equity for taking an account of the earnings under this lease, so as to determine the amount which the Central Company was entitled to be paid, was one of the points most strenuously urged by the original complainant in argument, printed and oral. The conclusions of the Court are stated in the opinion of Mr. Justice BRADLEY, filed after that hearing and reported in 34 Fed. Rep., 357. In that opinion Mr. Justice BRADLEY said (Rec., p. 542):

> "If the facts contended for are a good ground for relief at all, they are as available as a defense at law as in equity. *They are set up for the purpose of showing that* the condition subsequent created by the eighth article of the lease, the purpose of which was to cause the covenant to pay $264,000 per annum to cease, has been accomplished. Proof that that condition has been accomplished would be a legal defense to the action. * * * The difficulty of proving the fact that the net revenues are less than $264,000 a year *on account of the complication of the matters involved*, we do not regard as, *by any means, such as to draw the case into equity.* It is not a question of account *arising upon a fiduciary relation*, and *does not involve the principles* of such an account. It is necessary, it is true, for the complainants to show by their receipts and expenses that their net revenues are less than $264,000, but that may be done by a mode of proof very far short of that required from a trustee or agent in rendering an account to his beneficiary or principal."

Precisely the *same application* was presented again by the cross-bill. The question was of taking an

account of the earnings made by the Pullman Company in operating under this lease to determine how much money derived from those earnings should be paid to the Central Company. The question was precisely the same and the account to be taken identical with that presented in the original bill and considered in the opinion of Mr. Justice BRADLEY. No change had occurred *except* that the *attitude of the parties to each other* had been, upon this question, *exactly reversed.* Counsel of cross complainant *asked* then what he had resisted before.

Nor can the suggestion of discovery be more effective. Under the equity rule of the courts of the United States this cross-bill in effect contains no prayer for discovery at all. The cross-bill must affirmatively show the necessity of discovery not possible to be accomplished in a court of law in order to give jurisdiction in equity even for the discovery. Prayer for discovery of facts *which it is not shown could not be proved or obtained at law* will not confer that jurisdiction, and "*it is an abuse of the powers of chancery to interfere.*" In *Brown* vs. *Swann*, 10 P., 501, the Court said:

> "The bill is deficient in the material averment, *essential* to all such bills of discovery as this is, *that the complainants are unable to prove the facts sought from the conscience of the defendant by other testimony.* * * * The jurisdiction of a court of equity, in this regard, rests upon the inability of the courts of common law to obtain or to compel such testimony to be given. It has no other foundation; and whenever a discovery of this kind is sought in equity, if it shall appear that the same facts could be obtained by the process of the courts of common law, it is *an abuse of the powers of chancery* to interfere. The courts of common law having full power to compel the attendance of witnesses, it follows that the aid of equity can alone be wanted for a discovery in those cases where there is no witness to prove what is sought from the con-

> science of the interested party. * * * The rule to be applied to a bill seeking a discovery from an interested party is that the complainant shall charge in his bill that the facts are known to the defendant and ought to be disclosed by him, and *that the complainant is unable to prove them by other testimony.*"
>
> *Babbott* vs. *Tewksbury*, 46 Fed Rep., 86.
>
> *Drexel* vs. *Berney*, 14 *Ib.*, 268.
>
> 1 Pom. Eq. Jur., Section 230, page 237.
>
> *Rindskopf* vs. *Platto*, 29 Fed. Rep., 130.
>
> *Vennor* vs. *Ry. Co.*, 28 Fed. Rep., 591.

In the light of this equity rule this cross-bill contains no prayer for discovery. The mere words "and for discovery," accompanied by no more precise demand and by no averments to satisfy the rule of jurisdiction, are mere idle words and meaningless, and are ineffectual under the equity procedure of the courts of the United States.

(3.) Not less than in an original bill must the affirmative relief sought by a cross-bill be equitable, and when the distinctively equitable relief asked by the original bill fails and is eliminated and the only elements remaining are *legal in their nature*, equity has no longer jurisdiction and the Court has no power to proceed further.

> *Kramer* vs. *Cohn*, 119 U. S., 355.
>
> *Dowell* vs. *Mitchell*, 105 U. S., 430.
>
> *Lautz* vs. *Gordon*, 28 Fed. Rep., 264.
>
> Story's Eq. Pl., Sec. 398.
>
> *Tobey* vs. *Foreman*, 79 Ill., 489.
>
> *Sample* vs. *Barnes*, 14 H., 70 (see p. 40, *ante*).

Fourth.

The Court erred in not sustaining the three several demurrers to the cross-bill.

The effect of the *first* demurrer is already discussed on pages 40–44, *ante*. The *second* and *third* demurrers were directed to those portions of the cross-bill which prayed that the cross-defendant might be deemed to be the *trustee* for the cross-complainant for the *use of* all property transferred, and for all the existing railway contracts for transportation with railways with which the cross-complainant had contracts at the time of the lease, and of all sums of money derived or *in future to be* derived from operations under them, and to account for all profits derived since the making of the lease by the use of property transferred under it.

The trust asserted is one for operating, for the *use* and benefit of *the dormant* Transportation Company, the railway transportation contracts and other property transferred under the terms and for the purposes of the illegal and void lease.

An agreed trust for such a purpose would be equally *ultra vires*, and equally otherwise unlawful with the lease itself, and equally void as to both parties. And no Court can create it or permit it. The same considerations which preclude execution by the parties of the express contract of lease equally preclude the existence of any *fiduciary* relation between them to support the claim to profits derived from the use of property transferred under the lease, which is the first prayer of the cross-bill. No such relation can be assumed. But this *use* of property and contracts *for the lessor* and this accounting for profits and earnings of the business so conducted could have no other basis.

A bill for an account of profits made by the use in business of the property transferred under this lease

is a bill to *enforce directly* the illegal contract and to *secure its fruits.* (*Snell* vs. *Dwight*, 120 Mass., 19; *Leonard* vs. *Poole*, 114 N. Y., 371; *Samuels* vs. *Oliver*, 130 Ill., 73; *Croft* vs. *McConoughy*, 79 Ill., 346.)

It would simply give effect by circuity to the void lease, because giving to the *dormant* Transportation Company the profits and benefit of the use of the same property through the medium of the same illegal assignment, and under the same illegal conditions, except the specific compensation. It would still enable the Transportation Company "to continue in existence for no other purpose" than that of receiving "compensation *for not performing its duties*"; it would still give effect to the ascertained intention of the two corporations "to prevent competition and create monopoly," to the *illegal assignment* of property, and *to the abandonment of its public duty* by the cross-complainant. The *actual use* made of the property, the *profits of which* are claimed, was the *identical use provided for in the contract.* The trust would be an unlawful relation to assume by an *express* contract. Therefore, the Court cannot impose an *implied* contract which would be equally unlawful. "*The law never implies an obligation to do that which it forbids the party to agree to do*" (FIELD, *Ch. J.*, in *Zottman* vs. *San Francisco*).

It is not enough *to aver* the possession of property, and *that it is* held on a trust. A trust relation is *a deduction of law*, and it must be *shown how the trust arose* (*Jackson* vs. *No. Wales Ry. Co.*, 1 H. & Tw., 84). No relation of the Transportation Company at all to this property can be shown, except by recourse to the lease and allegation of the actual transfer. How *otherwise* is a trust to operate a sleeping car business for the Central Company to be grafted upon the *mere act of assignment* of contracts and property?

No valid trust can be founded on an interest which

depends upon an illegal contract, nor can any trust be established in contravention of the policy of the law.

The principle is thus stated in Hill on Trustees:

> "But no valid trust can be founded on an interest derived from an illegal contract, or established *in contravention of the general policy of the law.* Thus, in the case of an officer's half-pay, or a gaoler's fees, or a right to property depending on the issue of a suit then pending, or any interest the assignment of which is forbidden by the law on the ground of public policy, the Court will not recognize any trust which is attempted to be attached on a disposition of such property, for such a trust would be in direct violation of those rules of law.
>
> Hill on Trustees, *45.
>
> *Curtis* vs. *Perry*, 6 Ves., 739.
>
> *Nassau Bank* vs. *Jones*, 95 N. Y., 115.

This subject and the right to earnings or profits made under the lease must arise for further discussion under other assignments of error (*vide post*). The foregoing suggestions relate to the matters embraced in the first eight assignments of error (Rec., p. 1200); and substantially compose the first group of assignments of error as mentioned on page 29.

Fifth.

The Court erred in holding the cross-complainant entitled, under the circumstances stated in the cross-bill, to any affirmative intervention of the Court on its behalf relating to property transferred for the purposes of the illegal lease, or to earnings made by the use thereof.

We come now to those assignments of error which deny the right of the cross-complainant in any court

of law or of equity to the affirmative relief demanded by this cross-bill and accorded by the Court below. The denial is based upon the nature of that undertaking as that is defined in the judgments of this Court.

When this cross-bill was filed the original complainant had never refused to restore or compensate for every particle of property *actually received by it* under the lease. All property susceptible of being restored, it *had offered to the defendant*, and it had been *refused*. We could not restore the Central Transportation Company to operation of the service on the roads originally under contracts with it, even if any obligation on that account had existed, for they were all gone equally from it and us. Moreover, it had no capacity to operate them; but that, at least, was not our fault more than its own. *Nor would those roads, after all their effort to get rid of* that agency, permit it again to enter on their lines. We had asked the Court to take possession and care by a receiver of the cars remaining in existence, and that they might be sold to avoid waste; but this the defendant *had opposed* and the Court had accordingly refused, and from the time the lease was declared void the defendant has never been obstructed in taking possession of any part of the property in existence; and we submit that this fact *should be accorded more consideration than it has received in measuring the alleged responsibility of the cross-defendant*. Up to the filing of this cross-bill, there was never a time when the original complainant was not willing and ready to restore to the defendant or make compensation for all property it could fairly be claimed to have received under the lease. Indeed, the proposals which had been made by the original bill, but which had been *peremptorily rejected*, went far beyond that limit. As to *what property it might be held to have so received, there was wide difference of opinion;* but the extraordinary demands presented by the cross-bill made any composition impossible. We were willing to pay

for all actual tangible property received, but the contracts and patents that expired and other elements of the so-called property, which were all consumed and used up in the operation of the service, we insist we *had already paid for* with nearly $4,000,000 to the cross complainant. We deny an obligation to pay for these *again* under *the guise* of their *value as a part* of the "*plant*" in 1870, or under any *other name*. The extravagant *demands of this cross-bill* have driven us in this litigation to stand on the defensive position afforded by what seem to be, in the courts of every country, settled rules of law. It grounds its prayer for relief directly upon the original illegal contract, and more particularly upon *implied* contracts said to arise from the *illegal acts done under it* to carry out its purposes. Those were *the very acts* whose *inherent* illegality made the *original contract itself void.*

The contract has been held unlawful and void because *ultra vires*, and because, in violation of public policy and *of its public duty the cross-complainant* disabled itself from performance of its public functions. This, said the Court in *Thomas* v. *Ry. Co.*, 101 U. S., 83, and again in 139 U. S., 43, "is "*another* principle of *equal* importance, and *equally* "conclusive *against the validity* of this contract." In the language of Mr. Justice GRAY in *St. Louis, &c., R. Co.* vs. *Terre Haute, &c., R. Co.*, 145 U. S., 393, it

> "stood in the position of alienating the
> "powers which it had received from the State,
> "and the duties which it owed to the public,
> "to another corporation, which *it knew* had
> "no lawful capacity to exercise those powers
> "or to perform those duties."

The rule is universally established that in such case no aid at all will be given to one party against the other in respect to the contract *or to anything done under it*. On the contrary, every court will refuse to interfere, and will leave the parties just where they have placed themselves.

> "*We will not assist an illegal transaction in any respect*," said Lord ELLENBOROUGH. "*We leave the matter as we find it*; and then the maxim applies, *melior est conditio possidentis*" (*Edgar* vs. *Fowler*, 3 East., * * * 225).

The rule is equally explicit in the Supreme Court of the United States. In *Bank* vs. *Owens*, 2 Pet., 538, the Court said:

> "There can be *no civil right* where there can be no legal remedy, and there can be no legal remedy for that which is *itself illegal* * * * Nor is the rule applicable only to contracts expressly forbidden, for *it is extended to such as* are calculated to affect the *general interest and policy of the country*."

In *Wheeler* vs. *Sage*, 1 Wall., 518, the Court refused to hold one party amenable to others where all alike were originally engaged in a scheme to get certain real estate by process of misleading other creditors, and said:

> "A proceeding like this is against good conscience and good morals, and cannot receive the sanction of a court of equity. The principle is too plain to need a citation of authorities to confirm it. It is against the policy of the law to help either party in such controversies. The maxim, '*in pari delicto potior est conditio defendentis*,' must prevail."

In *Miller* vs. *Ammon*, 145 U. S., 421, the defendant in error sued in the Federal Court in Iowa to recover the purchase price of wine sold in Chicago. Defense was that the sale violated a municipal ordinance, and being an unlawful act created no right of action. To this demurrer was sustained and judgment rendered. This Court, by Mr. Justice BREWER, said:

> "The general rule of law is * * * that "when a plaintiff cannot establish his cause "of action without relying upon a illegal con-

> " tract, he cannot recover. Pollack's Princi-
> " ples of Contracts, pp. 253 to 260. * * *
> " In *Bank* vs. *Owens* (2 Pet., 527, 539) this
> " Court said: 'There can be no civil right
> " ' where there can be no legal remedy; and
> " ' there can be no legal remedy *for that*
> " ' *which is itself illegal.*'" The Court re-
> versed the judgment below, saying that
> nothing " excepts this case from the *ordinary*
> " rule that *an act done* in disobedience to the
> " law *creates no right of action* which a court
> " of justice will enforce."

It is hard to imagine what can be wanting in the judicial utterances of this Court to establish the position which we here maintain. Equally explicit is the Supreme Court of Massachusetts.

In *King* vs. *Green*, 6 Allen, 139, the Court says:

> " It is true that the law would not enable the defendant to recover such a debt (*Way* vs. *Foster*, 1 Allen, 408). But *neither will it* enable the plaintiff to recover back his property *given in pledge* for the debt, any more than to recover back the money after paying it. In all such cases the maxim *portior est conditio possidentis* is applicable. The plaintiff has, at least, as little claim to the aid of the law as the defendant."

In *Huckins* vs. *Hunt*, 138 Mass., 366, the Court said:

> " If two persons make an illegal contract, being *in pari delicto*, so long as it remains executory the law will not aid either party to enforce it, but, so far as it is executed the law will not lend its aid to either party to relieve him *from the consequences* of the illegal contract *or to rescind it.*"

In *Atwood* vs. *Fisk*, 101 Mass., 364, the Court says:

> " But it has also long been settled that the law will not aid either party to an illegal contract to enforce it against the other, *neither will it relieve* a party to such a contract *who*

has actually fulfilled it, and who seeks to *reclaim his money or whatever article of property he may have applied to such a purpose*. The meaning of the familiar maxim, *in pari delicto potior est condito defendentis*, is simply that the law *leaves the parties exactly where they stand;* not that it prefers the defendant to the plaintiff, but that it will not recognize a right of action, founded on the illegal contract, in favor of either party against the other. They must settle their own question in such cases without the aid of the courts.

" In the somewhat quaint language of Lord Chief Justice Wilmot in *Collins* vs. *Blantern*, 2 Wils., 350, 'all writers upon our law agree in this: no polluted hand shall touch the pure fountains of justice. Whoever is a party to an unlawful contract, if he hath once paid the money stipulated to be paid in pursuance thereof, he shall not have the help of a court to fetch it back again; you shall not have a right of action when you come into a court of justice in this unclean manner to recover it back. *Procul O procul este profani!*' In this respect the rule in equity is the same as at law. Equity follows the rule of the law, and will not interfere for the benefit of one such party against a *particeps criminis*. The *suppression of illegal contracts is far more likely in general to be accomplished by leaving the parties without remedy* against each other. And so the modern doctrine is established that relief is not granted where both parties are truly *in pari delicto*."

Ham *v.* Smith, 87 Pa. St., 66.

See also : *Johnson* vs. *Hulings*, 103 Pa. St., 498; *Myers* vs. *Meinrath*, 101 Mass., 366; *Thomas* vs. *Richmond*, 12 Wall., 349; *Brown* vs. *Tarkington*, 3 Wall., 377; *Randall* vs. *Howord*, 2 Black, 585; *Bartle* vs. *Coleman*, 4 Pet., 184; *Dent* vs. *Ferguson*, 132 U. S., 50; *Harris* vs. *Runnels*, 12 How., 79.

Naturally one inquires what modification *under special circumstances* may be recognized to a rule thus unqualified and established in the interest solely

of public security. As might be expected from the principle which is dominant, such recognition is within *narrow limits* and is well *defined.*

There are many cases in which courts have granted relief between parties where the basis for relief could be found without touching at all upon the illegal contract. An illustration is the case of *Hitchcock* vs. *Galveston*, 96 U. S., 341, where the *illegality* lay, *not* in *the undertaking to pay*, but in the undertaking to pay in bonds whose issue would be *ultra vires* Can it be said in this case that the illegality lay not in the undertaking to transfer, nor in the *act of transfer?* So relief has been given when it could be founded upon some *subsequent* or *other* contract altogether independent of the original one held to be violation of law. And some courts have sought to distinguish a contract merely *ultra vires* – not affirmatively *violative* of any law, but negatively unlawful, and therefore void, because the *juristic* person, the corporation, had not by the law of its creation been made capable of making it. Such contracts may have no moral color or obnoxious quality whatever. Counsel has always dwelt with *iteration* upon the language of this Court in the case in which this lease was held void, as if it involved an intimation that recovery might be had in this case, though the Court expressly declared that the question need not be considered because it was *not presented by the record*, and had not been argued. The language referred to is given in the note below.* But none of

* "The ground and limits of the rule concerning the remedy, in the case "of a contract *ultra vires*, which has been partly performed, and under "which property has passed, can hardly be summed up better than they "were by Mr. Justice Miller in a passage already quoted, where he said "that the rule 'stands upon the broad ground that the contract itself is "'void, and that nothing which has been done under it, nor the action of "'the court, can infuse any vitality into it;' and that 'where the parties "'have so far acted under such a contract that they cannot be restored to "'their original condition, the court inquires if relief can be given inde-"'pendently of the contract, or whether it will refuse to interfere as the "matter stands.'" Pennsylvania Railroad *vs.* St. Louis, &c., Railroad, 118 U. S., 317.

"Whether this plaintiff could maintain any action against this defendant,

these considerations enter into this situation. This lease was held void, not merely because *ultra vires*, but because it was a violation by the lessor of public policy and of public duty; because its undertaking involved an abandonment of its public service; a transfer of all its property and business to another corporation by which it disabled itself from performance of that public service; and an *express covenant* that it would not perform that service for nearly its whole term of incorporation. Then if the *action* be founded not in terms upon the contract of lease but upon those *very acts* of transfer, of abandonment, and of *self-disabling*, whose intrinsic illegality was itself the operative thing which vitiated the contract, there is found in them no subsequent, independent and innocent basis of relief. When this Court says it will *inquire* whether relief can be given *independently* of the contract, or whether it will refuse to interfere as the matter stands, what does it mean by relief given "independently of the contract"? Certainly, it does not mean that it will enforce a claim based on *the very acts* whose own *inherent* illegality had the *effect to make the contract* void. It does not mean to antagonize the "ordinary rule" stated by Mr. Justice BREWER (p 59, *supra*), "that an *act done in disobedience* to the law creates "*no right of action which a court of justice will* "*enforce.*"

It seems to us that in the language of this Court is a plain statement of the broad rule that where a contract *ultra vires* "has been *partly performed*," and "property has passed" under it; "where the parties *have so far acted* under such a contract *that they*

"in the nature of a *quantum meruit*, or otherwise, independently of the "contract, need not be considered, because it is not presented by this "record, and has not been argued. This action, according to the declara- "tion and the evidence, was brought and prosecuted for the single purpose "of recovering sums which the defendant had agreed to pay by the unlaw- "ful contract, and which, for the reasons and upon the authorities above "stated, the defendant is not liable for." 139 U. S., 60.

cannot be restored to their original condition" the Court "will refuse to interfere," but will leave the parties where they have placed themselves. If any relief can be ever given it must be on grounds *independent* of the contract, or of *acts in performance of it* equally illegal with the contract. It must be on grounds so independent that *they can be shown without showing the contract or any illegal acts done under it.* The rule of this Court is coincident with that laid down in *Kearley* vs. *Thomson*, 24 Q. B. Div., 742, in the Court of Appeal, and which we have quoted on pages 69 and 80 *post*.

The rule in this case, and the one which governs this cross-complainant, is clearly stated by MERCUR, *J.*, in *Holt* vs. *Green*, 73 Pa. State, 200, where he said:

> "The test whether a demand *connected with* an illegal transaction *is capable of being enforced by law is whether the plaintiff requires the aid of the illegal* TRANSACTION *to establish his case* (*Swan* vs. *Scott*, 11 S. & R., 164; *Thomas* vs. *Brady*, 10 Barr, 170; *Scott* vs. *Duffy*, 2 Harris, 20). If a plaintiff CANNOT OPEN HIS CASE WITHOUT SHOWING THAT HE HAS BROKEN THE LAW, a court will *not assist* him (*Thomas* vs. *Brady*, *supra*). * * * *The principle* to be extracted from all the cases is that *the law will not lend* its support to a *claim founded on* its own violation" (*Coppell* v. *Hall*, 7 Wallace, 558).

This language of Judge MERCUR describes with exactness the situation here. Whatever property was delivered was so delivered solely for the illegal purposes of the lease which has been adjudged illegal and void. There has been no subsequent or other contract or transaction between the parties. The cross-complainant *cannot* "*open its case*"; *it cannot trace its property* into the hands of the defendant, nor *show that it ever had possession of or title* to that property *without recourse to* the illegal contract and the *act of delivery under it*. Nor does the cross-bill *attempt* to do so.

Sir WILLIAM GRANT said in *Thomson* vs. *Thomson*, 7 Vesey, *473:

> "Then *how can you get at it except* through this agreement? There is nothing collateral, in respect of which, the agreement being out of the question, a collateral demand arises, as in the case of stock-jobbing differences. *Here you cannot stir a step but through that illegal agreement, and it is impossible for the Court to enforce it.* I must, therefore, dismiss the bill."

In *Sykes* vs. *Beadon*, 11 Ch. Div., 193, JESSEL, *M. R.*, quoted further from the above judgment and said:

> "A man procures smuggled goods, and keeps them, but refuses to pay for them. So in the underwriter's case, an insurance contrary to the act of Parliament, the brokers had received the money, and refused to pay it over, and it could not be recovered. No matter who complains of it, the thing is illegal. *You have no claim* to this money *except through the medium of an illegal agreement*, which, according to the determinations, you cannot support. Now, I apply that exactly here. You have no claim against Mr. *Lloyd* to compel him to make good the loss, *except through the medium of this illegal agreement* or contract."

In *Clements* vs. *Yturria*, 81 N. Y., 290, 291, FOLGER, *Ch. J.*, said:

> "It was a contract grossly *against public policy* and void. Judicial aid will not be given to enforce such a contract, *nor to maintain a claim that rests solely upon it.* * * * The question, then, with us is this: Did the plaintiff ever have such a right or interest in the property, as that *without proof of the contract he could have shown himself entitled to have immediate possession of it?*"

In *Kearley* vs. *Thomson*, 24 Q. B. Div. (1890), 742, FRY, *L. J.*, with the concurrence of Lord COLERIDGE, *C. J.*, said:

> "As a general rule, where the plaintiff cannot get at the money which he seeks to re

> cover without shewing the illegal contract, he cannot succeed. In such a case the usual rule is *potior est conditio possidentis*. There is another general rule which may thus be stated, that where there is a voluntary payment of money it cannot be recovered back. It follows in the present case that the plaintiff who paid the £40 cannot recover it back *without shewing* the contract upon which it was paid, and *when he shews that he shews an illegal contract*."

In *Coppell* vs. *Hall*, 7 Wall., 542, Mr. Justice SWAYNE said:

> "Whenever the illegality appears, whether the evidence comes from one side or the other, *the disclosure is fatal* to the case. No consent of the defendant can neutralize its effects. A stipulation in the most solemn form to waive the objection would be tainted with the vice of the original contract, and void for the same reasons. Wherever the contamination reaches, it destroys. *The principle to be extracted from all the cases* is that *the law will not lend its support* to a claim *founded upon its violation*."

In every possible aspect of this case the claim is *founded* on the *violation of law*. So far as it rests upon the lease it is founded on an express contract which has been adjudged void for that reason. So far as it rests upon *acts* of the parties, it is *founded upon the very acts whose inherent violation of law made the lease* unlawful and void. The transfers and assignments made under the lease were not adjudged ineffective because *they* were *connected with* an otherwise illegal contract; but it was the *illegality inherent in these assignments and transfers which made the contract* illegal and void. It was the violation of law inherent in these *acts* which poisoned the whole transaction. If by reason of this intrinsic illegality no *express* contract can be founded on them, how can the law raise and enforce any *implied* contracts founded on the same violation?

In *Higgins* vs. *McCrea*, 116 U. S., 684, the defendant sought *by a cross-action* to recover money paid to the plaintiff under some Board of Trade contracts made illegal by statute. This Court said:

> "The defendant's counterclaim is, therefore, to be tested by the same rule as if it had been the basis of an independent action, and the question is whether under any circumstances the defendant should have been allowed upon the pleadings and evidence to recover a judgment thereon. * * * The *cross-action* of the defendant, *as an independent suit*, it is clear, could *not have been maintained*. The *Court was bound to take judicial notice* of the fact that the dealings recited in the counterclaim were forbidden by law, and of its own motion should have directed a verdict against the defendant thereon (*Oscanyan* vs. *Arms Company*, 103 U. S., 251). If the defendant had withdrawn his counterclaim and docketed it as a separate suit against the plaintiffs, as permitted to do by the Code, it needs no discussion to show that his action must have failed. His rights are not changed by the fact that the two causes go on *parri passu*, and are tried at the same time. *We do not see on what ground a party who says in his pleading that the money which he seeks to recover was paid out for the accomplishment of a purpose made an offense by the law* and who testifies and insists to the end of his suit that the contract on which he advanced his money was illegal, criminal and void, *can recover it back in a court whose duty it is to give effect to the law which the party admits he intended to violate*."

In these last ten lines this Court has stated with as much accuracy as is within the power of language the exact case presented by this cross-bill.

Violation of Public Policy is Vicious.

There are some cases which assert as a rule that where a contract is merely *ultra vires* and has no other moral color and has been partially executed,

relief may be given upon it to the extent of the recovery of property which has passed under it, or compensation for its use. The type, and the principal one, of such cases is *Bath, &c., Co.* vs. *Claffy*, 151 N. Y., 24. This is the position attempted to be held by the Court below. It asserts this principle, or rule, and holds that the present case is one of a contract *ultra vires* and no more. It declares in express terms, that that is "all that can justly be said of it."

But nothing of this has application here because *first*, there is no such rule recognized in this Court, and *second*, the contract in question is *not* one merely *ultra vires*. (1) This Court has declared its rule to be that contracts merely *ultra vires* are absolutely void, but nevertheless, *where money or property has passed* under them, or the parties *have so far acted under* them, that they *cannot be restored to their original position*, it will *inquire* whether *independently* some ground of relief may be found. If no such *independent* ground of relief appears, however, the Court *will refuse to interfere*. (2) This present contract has been construed by this Court, and it has been held *not* to be one merely *ultra vires*. It has been held to be void because *ultra vires* and *also because*, in violation of public policy it involved the cross-complainant in an abandonment and a disabling of itself from the performance of public duty. That, said the Court, is *another* principle of *equal importance* and *equally conclusive* against the validity of the contract (101 U. S., 83; 139 U. S., 43); and nothing in *Bath, &c.*, vs. *Claffy* is applicable to the present situation. The case thus decided by this Court has been reviewed with much elaboration by the Judge below and a different conclusion reached. This Court said: "The NECESSARY CONCLUSION is, that the contract was unlawful and void *because* it was beyond the powers conferred by the Legislature AND BECAUSE it involved an abandonment * * * of duty to the public." In the Court below the Judge says: "ALL THAT CAN

JUSTLY BE SAID IS that the parties misconstrued their authority and that the lease is consequently *ultra vires.*" Upon that conclusion the decree is founded below. We insist, however, that in the Court below this question was *not open for his consideration at all.*

The contract being unlawful and void, therefore, not merely because *ultra vires*, but *also because* in violation of *public policy*, it is void upon grounds which all Courts, everywhere, recognize as precluding interference.

For violation of public policy is immoral. An act of the most neutral and harmless character may be prohibited by statute or not authorized by charter; but an act is made void for its violation of public policy because it is so *inherently obnoxious to the public welfare and security* that independently of any statute or prohibition it cannot be permitted, and, *as a matter of public protection, will be repressed* by the Courts. In *Bishop* vs. *Palmer*, 146 Mass., 474, the Court, speaking specifically of a contract in *restraint of trade*, one of the very reasons for which this lease was held void, said:

> " It is urged that this rule does not apply to a stipulation of this character, which violates no penal statute, which contains nothing *malum in se*, and which is simply a promise not enforceable at law. *But a contract in restraint of trade is held* to be void because it *tends to the prejudice of the public.* It is therefore deemed by the law to be not *merely an insufficient or invalid consideration* BUT A VICIOUS ONE. *Being so it rests on the same ground* as if such contracts were forbidden by positive statute. They are *forbidden by the common law*, and are held to be illegal."

In *Kearley* vs. *Thomson*, 24 Q. B. Div., 742, the defendants were solicitors, and in a bankruptcy proceeding " undertook not to attend on the debtor's public examination or to oppose his discharge, provided the plaintiff paid them an agreed sum " for

costs ordered to be paid out of the estate, but which from want of assets had not been paid. On this account the plaintiff had paid £40, and the plaintiff demanded and sued for repayment.

The Court said:

> "The *tendency* of such a bargain as that entered into between the plaintiff and the defendants is obviously to *pervert the course of justice*. Although the defendants were under no obligation to appear, they certainly were under an obligation *not to contract themselves out of the opportunity* of appearing. * * * As a general rule where the plaintiff cannot get at the money which he seeks to recover without shewing the illegal contract, he cannot succeed. * * * It follows in the present case that the plaintiff who paid the £40 cannot recover it back without shewing the contract upon which it was paid, and when he shews that he shews an illegal contract. * * * *What is the condition* of things if the illegal purpose has been *carried into effect in a material part* but remains unperformed in another material part? As I have already pointed out in the present case, the contract was, that the defendants should not appear at the public examination of the bankrupt, or at the application for an order of discharge. It was performed as regards the first; but the other application has not yet been made. *Can it be contended* that if the illegal contract has been *partly* carried into effect, and *partly* remains unperformed, *the money can still be recovered?* In my judgment *it cannot be so contended with success*. Let me put an *illustration* of the doctrine contended for, which was that partial performance did not prevent the recovery of the money. Suppose a payment of £100 by A to B on a contract that the latter shall murder C and D. He has murdered C, but not D. Can the money be recovered back? In my opinion it cannot be. *I think that case illustrates and determines the present one.*
>
> "I hold, therefore, that where there has been a *partial carrying into effect* of an illegal purpose, *in a substantial manner*, it is *impos-*

> *sible*, though there remains something not performed, *that the money paid under that illegal contract can be recovered back.*"

The illustration employed by the Court in *Kearley* v. *Thomson* sufficiently indicates its view that contracts in violation of public duty and of public policy are inherently "vicious," and are not destitute of moral color or of "turpitude."

It is the claim that this lease was merely *ultra vires* and involved no other vicious or obnoxious element, that has been relied upon in the Court below to wrest the present case from the settled rules. The proposition is asserted in the opinion (Rec., pp. 747-8), "that the courts will interfere to compel "restitution of property, under such a contract, by "one who repudiates it *except* when the contract "involves *moral turpitude*." He further says: "What constitutes 'moral turpitude,' or what will "be held such, is *not entirely clear*. A contract to "promote crime certainly involves it. A contract "to promote public wrong, short of crime, may or "may not involve it. If parties *intend* such wrong, "as where they conspire against the public interests "by *agreeing to violate the law or some rule of pub-* "*lic policy*, the act doubtless involves moral turpi- "tude." Citing definitions from dictionaries, indicating *intense degrees* of baseness or vileness of principle as involved in the word "turpitude," the Court enters into an earnest argument to vindicate the immunity of the cross-complainant from blame, or any degree whatever of culpable intention, asserts that the "question of interpretation" "was a close and difficult one," and arrives at the following conclusion: "*All that can justly* be said, therefore, is "that the parties *misconstrued their authority*, and "that the lease is, consequently, *ultra vires*" (Record, pp. 1132, 1195).

It is not to be obscured that this is the *first* vital question presented in the conclusion of the Court below; whether an express and unequivocal agree-

ment for the violation of public policy is or is not deemed by the law to be of that character which precludes affirmative intervention of courts on behalf of either party against the other. The one purpose of the argument presented in the opinion above cited is to show that such an agreement in the present case made the consideration of a contract free from any moral taint, and contained no element deemed vicious or immoral *by the law.* Upon this question this case turns in the *first* instance. Subsequent questions, and whether they arise or not depend upon the determination of this one. For this reason argument is strenuously adduced to support the proposition that the cross-complainant did not know that its contract was obnoxious to law nor was bound to notice it until *informed by the cross-defendant;* and that it supposed it had legislative authority for the covenants it made. This is held to justify the legal conclusion that the contract and acts of the cross complainant were void of any moral color, and innocent; that the lease was merely *ultra vires* technically and *nothing more*, and that the cross-complainant must not be *visited with knowledge* of its illegallity or with any *intent* obnoxious to the law. On the contrary, we insist that in the *first* place this question had been settled by this Court between these parties, and adjudged, and was ***not*** *open* to the Court below; and in the *second* place that the conclusion of that Court has no support from any facts shown in the record.

Recurring to the opinion of the Court below, it is plain that this transaction did not offer itself to the mind of the Supreme Court in this guileless aspect; nor present a "question of interpretation" which seemed to be "a close and difficult one." Construing the special Act of 1870 this Court held, that in the matters of *leasing* or *transferring* its "railway cars" and "other personal property," it conferred on the cross-complainant merely the "*right to do as it had been doing* * * * in the regular course

of its business." It said: "The EVIDENT PURPOSE "of the Legislature, in passing the Statute of 1870, "was to enable the plaintiff THE BETTER TO PERFORM "its duties to the public. * * * *An* INTENTION "*that it should immediately* ABDICATE THOSE POWERS "AND CEASE TO PERFORM THOSE DUTIES IS SO INCON-"SISTENT WITH THAT PURPOSE that it cannot be "implied" from any expressions to be found in this statute (Page 77 *post, note*). Then this Court proceeded to consider the contract which was actually made, and it said:

> "By the contract between these parties, as expressed in the indenture sued on, are transferred all cars already constructed, all existing contracts with railroad companies for running cars, all existing patent rights under which other cars might be constructed, and all other personal property, moneys, credits and rights of action of the plaintiff. But after *the cars and the railroad contracts* may have *ceased to exist*, and after all those patent rights must have expired, the indenture is still to continue in force for the full term of ninety-nine years, unless sooner terminated as therein provided. In *addition to* all this, the *plaintiff covenants*, in the most express and positive terms, never to 'engage in the business of manufacturing, using or hiring sleeping cars,' while the indenture remains in force. In short, the plaintiff not only *parts with all its means of* carrying on the business, and of performing the duty, *for which it had been chartered*, of transporting passengers and making and letting cars to transport them in, but it undertakes to *transfer*, for ninety-nine years, nearly co-extensive with the duration of its own corporate existence, the whole conduct of its business, and the performance of all its public duties, to another corporation, and to continue in existence, during that period, for no other purpose than that of receiving, from time to time, from the other corporation the stipulated rent or compensation, and of making dividends out of the moneys so received.
>
> "Considering the long term of the indenture, the *perishable nature of the property*

> *transferred*, the large sums to be paid quarterly by the defendant by way of compensation, its assumption of the plaintiff's debts, and the *frank avowal, in the indenture itself*, of the *intention* of the two corporations to prevent competition and to create a monopoly, there can be no doubt that the *chief consideration* for the sums to be paid by the defendant was the plaintiff's *covenant not to engage in the business* of manufacturing, using or hiring sleeping cars; and that the *real purpose* of the transaction was, *under the guise* of a lease of *personal property*, to transfer to the defendant nearly the whole corporate franchise of the plaintiff, and to continue the plaintiff's existence for the *single purpose of receiving compensation for not performing its duties.*"

It is plain, therefore, that the Judge below was not justified in his zealous exoneration of the cross-complainant from all illegal purpose in this illegal lease, nor in the assertion that *it supposed*, or had reason to suppose, that the Legislature *ever intended* by the Act of 1870 *to authorize* what was actually done, as it is detailed by the Supreme Court in the above citation. That Court had held that the "EVI-" DENT PURPOSE of the Legislature in passing the " Statute of 1870 was to enable the cross-complainant " THE BETTER TO PERFORM its duties to the public." Nor was he justified in the assertion that "it *must not, therefore, be visited with knowledge of the invalidity* * * * *until* the Pullman Company * * * *raised the question;*" nor in the conclusion that "*all* that can *justly* be said, therefore, is that " the parties misconstrued their authority, and that " the lease is, consequently, *ultra vires.*" By all these phrases the consequences of this court's judgment are minimized and evaded, and its conclusions and forcible language are skillfully dissipated into air and disregarded. The contract described by the Supreme Court was something far more than merely *ultra vires*. It was, and was *in-*

tended to be, an *extreme violation of public policy*, which, under the ruling of the courts of New York, Pennsylvania and Massachusetts above cited, is classed among those contracts, "vicious" and immoral, with the consequences of which courts will not interfere. It far transcended any authority that *could have been supposed* to have been conferred by the Legislature, or which it was *ever asked to confer*.

In the application of the Central Transportation Company to the Legislature for new powers and extension of its charter, it gave no hint to that body that it contemplated such a transaction as this lease embodies. It asked for additional corporate life—additional capital, and new and additional powers. It *impliedly represented* that it was *intending* under some form of arrangement and contract, new and extended corporate activity. It intimated not only its purpose to hold itself permanently capable of the discharge of its corporate functions, but that it was actually contemplating a more comprehensive performance of its public service. There is not a shadow of reason for saying that it ever supposed the Legislature had intended to authorize it to make the contract which this court has thus analyzed and held void, namely, to abandon forever its powers and resources, old and new, and the performance of its duties to another corporation; and, moreover, to *enter into an express and positive covenant that it would never* do any of the acts or perform any of the public service for the performance of which it asked new powers and functions. All this the Supreme Court has expressly dwelt upon in detail, and the earnest advocacy contained in the language of the opinion below is quite unjustified by the facts, and disregards and rebukes the criticisms which are contained in the judgment of this Court.

The Central Transportation Company *knew* that the Legislature in its Act of 1870 *never contemplated the covenants* of this lease. We submit that the

Statute of 1870 was *never* "supposed to confer full authority to make" *this* contract. No evidence whatever "shows that the statute was procured for the express purpose of granting" such authority. No indication exists that the Legislature had ever the slightest intimation that *such* a contract was contemplated. Exactly the contrary was expressly *declared by this Court* (139 U. S., 51). The Central Transportation Company *knew* that it had never asked for or received authority to *abandon all its public duties;* to make a positive *covenant never to exercise* any of its corporate functions *anywhere;* and, having obtained an extension of its corporate life, to continue thereafter in existence "for the *single purpose of receiving compensation for not performing* its duties." It *never asked* or ventured to ask the Legislature openly *for authority for* such a proceeding. The violation of public policy which it knowingly and intentionally engaged in made its contract void, and void for the precise considerations upon which courts always refuse to interfere, but leave the parties where they have placed themselves (*Holt* vs. *Green*, 73 Pa. St., 200; *Clements* vs. *Yturria*, 81 N. Y., 290, 291; *Bishop* vs. *Palmer*, 146 Mass., 474; *Atwood* vs. *Fisk*, 101 Mass., 364; *Huckins* vs. *Hunt*, 138 Mass., 366; *King* vs. *Green*, 6 Allen, 139. The degree of obliquity which the parties in their own minds associated with their undertaking is immaterial. The law makes that subject its own care in its guardianship of the public interest and security. Under the settled rule of this Court, declared in a case of contract *ultra vires* (*St. Louis, Vandalia, &c., R. R.* vs. *Terre Haute, &c., R. R.*, given in the foot note on page 76 *post*), the cross-complainant *must be visited* with *knowledge of the invalidity*, and the earnest exoneration in the opinions below is without authority of any sort whatever.

With all due respect, we might inquire in what code of jurisprudence the learned Judge below found

the principle that the legal consequences of contracts violative of public policy were determined, not by the nature of the contract, but by the intent of the parties, and might be avoided by averments and insistence that the parties were guileless and intended no wrong; that they merely miscontrued the law, and that the case was merely one of disagreement on a question of interpretation between their advisers and the Court. In the light of it, however, we venture to put within easy comparison the rulings of this Court and the subsequent rulings of the Court below for illustration of other possible disagreements of opinion.*

Distinction has sometimes been sought on the ground that the parties were not *in pari delicto*,

---

From Opinions of the Supreme Court of the United States:

* "In the case at bar the contract by which the plaintiff conveyed its railroad and franchise to the defendant for a term of nine hundred and ninety-nine years was *beyond the defendant's corporate powers*, and, therefore, unlawful and void, of which the plaintiff WAS BOUND TO TAKE NOTICE. The plaintiff stood in the position of alienating the powers which it had received from the State, and the duties which it owed to the public, to another corporation, which it *knew* had no lawful capacity to exercise those powers or to perform those duties. If, as the plaintiff contends, the contract was also beyond its own corporate powers, it is certainly in no better position. In either aspect of the case, the plaintiff was *in pari delicto* with the defendant. The *invalidity* of the contract, in view of the laws of which both parties were *bound to take notice*, WAS APPARENT ON ITS FACE" (145 U. S., 408, *St. Louis, Vandalia, &c., R. R. Co.* vs. *Terre Haute, &c., R. R.*).

From Opinions of BUTLER, *J., in this cause in the Circuit Court:*

"Both parties firmly believed the lease to be valid; they were so instructed by eminent counsel, and were therefore justified in the belief. It was not until after the lapse of many years, when the property was irretrievably lost to the transportation company, that IT HAD CAUSE TO DOUBT the validity of the lease. *It* MUST NOT, THEREFORE, BE VISITED WITH KNOWLEDGE OF THE INVALIDITY, and the consequences of such knowledge, UNTIL THE PULLMAN COMPANY *changed its position and raised the question*" (Rec., p. 1195).

"Thus it follows that unless the execution of the contract between the Central Transportation Company and the Pullman Palace Car Company involves moral turpitude, *as before described*, the former may recover back the property parted with under it. That it does not involve *such* turpitude seems clear. Neither party contemplated any wrong. Both believed the contract to be lawful.

and one was less guilty than another. But no such distinction prevails in the courts of the United States, nor would it be available in this case. Here this lease was held void specifically for the wrong of the cross-complainant. This Court said it was not necessary to inquire into the powers of the defendant, the Pullman Company. It was the Central Transportation Company that had exceeded the powers of its charter; it was that company that had abandoned its public duties; it was that company which had covenanted not to exercise any of its functions during the remainder of its corporate

---

This court also, in *Cent. Tr. Co.* vs. *Pullman's Pal. Car Co.*, 139 U. S., 51, speaking of the lease now in question, stated as the *first* of three *distinct* grounds upon which contracts made by a corporation beyond the scope of its powers are void, "the obligation of every one "contracting with a corporation, "*to take notice of the legal limits of* "*its powers.*" (See also *McCormick* v. *Market Bank*, 165 U. S., 549, 550; *Cal. Bank* v. *Kennedy*, 167 U. S., 368.) The Court further said:

"The EVIDENT PURPOSE of the Legislature, in passing the statute of 1870, was to enable the plaintiff THE BETTER TO PERFORM its duties to the public by prolonging its existence, doubling its capital and confirming, if not enlarging, its powers. *An* INTENTION *that it should immediately* ABDICATE THOSE POWERS AND CEASE TO PERFORM THOSE DUTIES IS SO INCONSISTENT WITH THAT PURPOSE that it cannot be implied without much clearer expressions of the legislative will looking towards that end, than are to be found in this statute."

"In addition to all this, the plaintiff *covenants, in the most, express and positive terms never to engage in the business* of manufacturing, using or hiring sleeping

The statute of 1870 was supposed to confer full authority to make it. The State had unquestionable power to grant the authority; and the evidence shows that the statute was procured for the express purpose of granting it. THE QUESTION WHETHER THE STATUTE DID OR DID NOT GRANT IT WAS A CLOSE AND DIFFICULT ONE. The learned counsel of the parties and the Court disagreed on the subject. It was a question of interpretation. In the Court's view the lease was *ultra vires* and void; in the counsel's it was authorized and lawful.

life, and it was that company that had covenanted to exist "for the single purpose of receiving compensation for not performing its duty."

Upon the question of whether relief can be given under an illegal contract by restoration of parties to their original condition, and permitting the recovery of property transferred under it, the Supreme Court has defined the line upon which it will act. In *Pennsylvania Railroad* vs. *St. Louis, &c., Railroad*, 118 U. S., 317, the Court said: "Looking at the case as one where the parties have so far

---

cars,' while the indenture remains in force.

"Considering the long term of the indenture, *the perishable nature* of the property transferred, the large sums to be paid quarterly by the defendant by way of compensation, its assumption of the plaintiff's debts, and the frank avowal in the indenture itself *of the intention of the two corporations to prevent competition and to create a monopoly*, there can be no doubt that the *chief consideration for the sums to be paid* by the defendant *was the plaintiff's covenant not to engage in* the *business* of manufacturing, using or hiring sleeping cars, and that the *real purpose of the transaction was, under the guise of a lease of personal property*, to transfer to the defendant nearly the whole corporate franchise of the plaintiff, and *to continue the plaintiff's existence for the single purpose of receiving compensation for not performing its duties.*

"The NECESSARY CONCLUSION from these premises is that the contract sued on was *unlawful* and void, *because* it was beyond the powers conferred upon the plaintiff by the Legislature, *and because* it involved AN ABANDONMENT by the plaintiff of ITS DUTY TO THE PUBLIC."

True, *it violated a rule of public policy*, but this was only because the Court construed the statute more narrowly than the legal advisers of the parties had done. The Legislature is the judge of what the public interests require in the premises, and if it had authorized the lease, as the parties honestly believed it had, no question of public policy could have arisen.

ALL THAT CAN JUSTLY be said, therefore, is that the parties *misconstrued* their authority, and that the lease is consequently *ultra vires*" (Rec., p. 1132).

acted under such a contract that they cannot be restored to their original condition, the Court inquires *if relief can be given independently of the contract*, or whether it will refuse to interfere as the matter stands?" And it repeats this language in *Central Trans. Co.* vs. *Pullman Company*, 139 U. S., 57. The Court asserts again and again, that whatever may be done in such situations is not in affirmance or execution of the illegal contract, but distinctly in disaffirmance of it. When the Court inquires, therefore, "*if relief can be given independently of the contract*," the inquiry is whether, as in the cases hereinbefore referred to, there can be found any *subsequent or collateral or independent contract*, express or implied, in pursuance of which a restoration of property may be enforced without *any execution*, direct or indirect, of the illegal contract, and without *any resort whatever* either to the terms of that contract or *to any unlawful thing which the parties may have done in pursuance* of it. If no such independent contract exists, and no such conditions, no relief can be given (*Vid.* p. 63 and 67, *ante*).

The present case, being one of contract and of transactions in violation of public policy, in restraint of trade, in abandonment of public duty, as well as *ultra vires*, is distinctively of the class of those to which the strictest language of the courts is applied in their refusal to interfere, and in their assertion of the inflexible rule that parties will be left where they have placed themselves. In *St. Louis, Vandalia, &c., R. R.* vs. *Terre Haute, &c., R. R., supra*, this very case is cited as an illustration of the class of contracts which, being absolutely void, admit no interference of the Court in aid of either party in any respect. There is no qualification of the rule that property or money *delivered under* an illegal contract *to promote the illegal purpose* cannot be recovered by the aid of any court of law or equity. Still less can courts relieve against the consequences of *acts* which were *inherently* of such

illegal character, that it was the undertaking to *do them* which made the contract illegal and void.

Higgins vs. *McCrea*, 116 U. S., 24.
Langton vs. *Hughes*, 1 M. & S., 593.
Cannon vs. *Bryce*, 3 B. & Ald., 179.
Hanauer vs. *Doane*, 12 Wall, 348.
Tracy vs. *Talmage*, 14 N. Y., 162.

In this present case the original illegal purpose was fully carried out and the contract completely executed. The lessor had completed the transfer of all its property; it had altogether abandoned its business and the operation of its service and had effectively disabled itself in that respect by transfer of its resources. Another corporation, the lessee, had, with its consent and by the procurement of the Railway Companies, taken its place upon their lines and in the performance of the service. It is conceded by the lessor and is held by the Court below (Rec., pp. 1127-1132-1195), that the lessor could not resume its business or recover its place on the railways, and that restoration of the original status, to any extent whatever, had become impossible. The contract was, therefore, completely executed. In such a case upon all authority the Court will refuse to interfere.

But it is not necessary that all the terms of an illegal contract should have been carried out to prevent a recovery of money or property passed under it. In *Kearley* vs. *Thomson*, 24 Q. B. Div. (1890), 742, in the Court of Appeal, FRY, *L. J.*, with the concurrence of Lord COLERIDGE, *C. J.*, said:

> "I hold, therefore, that where there has
> "been a partial carrying into effect of an ille-
> "gal purpose *in a substantial manner*, it is
> "impossible, though there remains something
> "not performed, that the money paid under
> "that illegal contract can be recovered back."

Sixth.

The Court erred in its determination of what constituted "the property" transferred under the lease of 1870, *for which it held compensation must be made; and the value of the total capital stock, estimated by market price of certain shares, was no proper measure of value of such property.*

This brings us to consideration of those assignments of error including Nos. 16 and 17, together with Nos. 11, 12, 13, 14, 26, 27 and 28, which, even if the cross complaint be held entitled to relief at all, and to relief in this forum and this proceeding, nevertheless, deny, for various reasons, the justice of the present decree.

The Court below has held that the cross-defendant is holden to make compensation for whatever property it received. We come, therefore, now to consideration of the conclusions of the Court as to *what that property was*, and as to the *measures of responsibility and of value* which it has adopted and decreed.

The property which purported to be assigned to the lessee consisted of three items, namely: (1) certain railway cars, (2) certain patent rights, and (3) certain operating contracts with railways.

The railway cars—nominally 119 in number, but really only 115, for four had previously been destroyed (Rec., p 1164)—together with a small sum of money composed the only items of *tangible* property.

These are relatively unimportant; for the cross-bill seeks to charge us, not merely with *property*, but with compensation in damages, as for an aggressive and wrongful breaking up of a settled business; and with compensation for all sorts of alleged

incorporeal and intangible rights, equities and possibilities, which, whether ever transferred to us or not, the cross-complainant claims to have lost and not to have recovered. All this measure of responsibility, legal or moral, we deny. We say, that whatever was done, was done by the Central Company alone, or with its concurrence and participation, and was its own doing quite as much as it was that of the cross-defendant; and was indeed more distinctively its own doing, because the illegality of its own acts occasioned its own loss and induced the consequences of which it complains. The defendant is no more in fault or answerable for these consequences than the complainant, and upon no legal principle can it be charged with this burden of indemnity.

The indications of the Court to the Master, as to the *corpus* of property for which it held compensation must be made, were far more comprehensive than a mere enumeration of these details of property. In the order of reference the Judge below said (Rec., p. 1127):

> "The Pullman Company took possession of the property *and business* transferred, consolidating it with its own, thereby creating one harmonious system of sleeping-car transportation that extended throughout the country. * * * Pullman cars and equipments have taken the place of the cars and equipments of the Central Transportation Company, and the *property and business* of the latter company are completely merged in the property and business of the former—as the parties, no doubt, contemplated they should be when executing the lease. The consolidation intended of the interests and prospects of the two companies could not otherwise be accomplished. * * * The property must, therefore, be returned or paid for. The former is impossible. The property has substantially disappeared. It has become incorporated with the business and property of the

> plaintiff and cannot be separated. Compensation must, therefore, be made. What, then, is the measure of compensation? Clearly, we think, the value of the property when received, together with its earnings since, less the amount paid as rent. In ascertaining the value, the annual rental may be considered; but it does not afford a conclusive nor entirely safe measure of value, because the unlawful consideration (that the Central Company would abstain from exercising its franchises) entered into it. For the same reason the earnings cannot be measured by the rent. The value of the property and earnings must be ascertained from a careful examination of the property, the business and its earnings, at the time they passed into plaintiff's hands and subsequently. It is not their value to the plaintiff we want, but to the defendant. In effect, *what it lost by parting with them.*"

Assuming to follow the indications of the Court, the claim presented by the cross-complainant before the Master was of a comprehensive sort, repudiating all details and inventories of specific property. It demanded indemnity from the Pullman Company for all that it claimed to have lost by making the lease, and by its own acts and defaults in pursuance of it. It insisted upon dealing with an aggregation called its "plant" or "going concern," comprehending all the *physical* property, and also all the *intangible* and *incorporeal* rights, equities, activities, powers, and business of the Central Company, except its mere corporate existence and capacity to receive revenue and distribute it to its stockholders, which being neither assigned nor assignable, should certainly enter into no estimate of value. Even this franchise *was ultimately included* in the valuation of property charged to the Pullman Company. All the rest, it insisted, was *transferred to and received by* the Pullman Company and *absorbed by*

it; and appraisal and recovery was demanded of the value of this *aggregate* which is called the "going concern." For example, it insisted that there should be included as property received, the *probability* of the Central Company being practically allowed to operate over roads with which it had no contracts, and the *probability* of continuance, *almost in perpetuity*, of the actual contracts with railways, because, expiring at different times, the operation of a system could not be interrupted by letting one or another drop out of a number of interlacing contracts. There were no contract rights of renewal. In this general mass, the cars were a concrete and tangible asset that could be scheduled, and of the patent rights a valuation was made; but this was done solely as a means or method of arriving at a general appraisal of the *value of the aggregate* above mentioned, called "the plant" of the Central Company, and the cross-complainant protested against a dealing by the Master *with any details of property.* It insisted upon a round appraisal of the assets, resources, equities and potentialities of the Central Company in 1870 taken together, and it insisted upon a finding that this general aggregate thus appraised constituted what was "*parted with*" by the Central Company and *received by* the Pullman Company.

This view was adopted by the Master, and under this conception as to what constituted the "property" transferred and "parted with" by the Central Company, he appraised the value of this totality as "a going concern" at a round gross sum. His construction of the order of reference, which has been approved by the Court, may be exhibited by certain passages of his report, viz.:

> "X. The contracts assigned have been heretofore described. There is no separate appraisal or valuation of these contracts con-

tained in the evidence, and when their peculiar nature and varying terms of duration and different stipulations with regard to maintenance of cars and liability for casualties are considered, it is difficult to see how any such separate valuation could be made. * * *

XII. Passing to the consideration of the main question raised in the present reference, viz., *what the Central Transportation Company lost* by the transfer of its property to the Pullman Company, the measure of damages as determined by the Court requires the Master to ascertain:

(1.) What was the value to the Central Transportation Company in 1870 of the property transferred?

* * * The order of reference as understood by the Master limits his authority to the ascertainment of *the extent or amount* of the property received and *its value when received*, together with its earnings since, less the amount paid as rent. General directions as to the course to be pursued by the master in arriving at the above valuation were stated by the Court in its opinion. *Whether* in connection with this valuation there *is to be a separate appraisal of each form of property transferred* or the appraisal of the *plant as a going concern*, is a question which is left open, and which, therefore, in the first instance, must be decided by the Master.

There is no estimate whatever given by any witness of the valuation of the contracts, nor can any such estimate be made by the Master from any evidence contained in the Record. There are estimates, as has been stated, of *the value of the cars as vehicles*, and also of the value of *the cars with the accumulated liabilities of the railroad companies*. There is testimony as to the *cost of the patents at the time of their transfer*, which is presumably their value at that time, and of the *value of the equipment* and furniture of the cars, and of the *amount of actual money turned over* to

the Pullman Company. There is evidence of the earning capacity of the Central Transportation Company at the time of its lease to the Pullman Company and for two subsequent years. There is evidence of the value of the stock of the Central Transportation Company in the market at the time of the transfer, and also of *the value of the plant as a going concern.* The *latter* is the *standard of value adopted by the Master*, partly because there is no testimony by which any other value can be arrived at, and partly because *if such testimony existed an accurate valuation of the property could not be reached by an addition of the separate values of the several forms of property, which taken together, constituted the plant in question.*

* * * * * *

The value of the stock on the street is a positive indication of the estimate placed on the property by the public. That it is not entirely a satisfactory measure of value must be conceded, but in the judgment of the Master, supported as it is by the best independent estimate that the evidence affords, it should be accepted as the fairest criterion of value. This amount has, according to the testimony, been placed at from $56 to $60 a share; and whilst the evidence as to these values is not as satisfactory as the Master would wish, it is, nevertheless uncontradicted. As between the two quotations above named, which indicate the fluctuations of the stock in value, the Master has taken the average, or, in other words, a valuation of $58 a share. This, he believes, is as fair and equitable a valuation as is possible under the testimony, and he accordingly reports *the value of the property, when received*, is by him appraised at $58 a share or $2,552,000" (Rec., pp. 1170–7).

As this proceeding and valuation of the Master has been confirmed and adopted by the Court, a

summary of the valuation carried into the existing decree may be thus stated:

Estimated value of the entire assets, rights and resources of the Central Company in 1870 *to itself*, as a "going concern." ----------		$2,552,000 00
Value of tangible property, cars and equipment (Rec., pp. 1164, 1168. An average).....	$711,673 25	
Cash (Rec., p. 1169).....	17,000 00	
		728,673 25
Leaving for value of the Central Company's contracts and equities and possibilities thereunder, the obsolete and useless patents, and other incorporeal elements *represented in market value of all the shares of stock*.		$1,823,326 75

The cross-defendant is held accountable, therefore, not merely for specific and actual items of tangible property delivered and received, but for this vague and vaporous body of rights and chances which is called the "plant" or "business" of the cross-complainant, as if they represented *a solid and permanent property*, like the road-bed and equipment of the Pennsylvania Railway for example. It is said that this is what the cross-complainant "parted with" and lost by transfer, and, that *consequently*, it represents a *corpus* of property which the cross-defendant received and for which it is chargeable.

Attention ought to be given at this point, and before proceeding further, to the utterly groundless assumption that any "plant or business" of the

cross-complainant existed which had value arising from such substantial and permanent character or conditions. The entire pretense upon that subject is *fictitious* to the last degree. Its only foundation, apart from the wretched outfit of obsolete cars and their equipment, was the sixteen contracts, chiefly with the roads of the Pennsylvania and Baltimore and Ohio systems. So far, from those contracts representing substantial and permanent relations, the truth was, that before, and at the time of the lease, the railways were so discontented with the service of the Transportation Co. that they were then studying how to rid themselves of the existing relations and put an end to the Central Transportation service on their lines. They found that the wretched equipment and inferior service was diverting the current of travel to competing railways, and the lease which was made between the Central and Pullman Cos. *had its origin with the railway companies*, and in a two-fold desire on their part, particularly on the part of the Pennsylvania Railroad Co. to *get rid* on the one hand of the Central Transportation Co.'s service, and on the other to secure the affirmative advantage of the Pullman Company's service, because of its distinguished superiority to any other in the country at that time, and because of its important railway connections and its control of travel from the Pacific coast and elsewhere. All this is fully established in the report of the Master, and in the testimony, a portion of which is given in the note below.*

---

* *Testimony of* GEO. M. PULLMAN, Rec., p. 228:

A. The Pennsylvania Railroad Company contract was the result of an application to me from the president of that company, and I assumed, and subsequent events have confirmed me in the opinion, that it was quite as much to the advantage of that company to have Pullman cars as it was to the Pullman Company to operate the line. The Pullman was then operating the Western lines, the Union Pacific, and it had a very large influence upon the travel, and the Pennsylvania Railroad officials were notified by their agents in California that if they wanted to secure California travel east from Chicago they must get Pullman cars; the people over there did not know any other cars. Mr. Scott, then president of the

We earnestly urge attention to the facts established by this testimony. They are strangely ignored and disregarded in the proceedings of the Court below, but are of the greatest importance to common jus-

---

company, called upon me subsequently and proposed to make a contract with the Pullman Company, provided we made some arrangements with the Central Transportation Company. Their cars, he said were not satisfactory, the business was not being done satisfactorily, and negotiation was commenced then in August, and was concluded, I think, in January following.

* * * * * * * *

Testimony of EDWARD H. WILLIAMS, *Gen'l Sup't Penn. R. R. Co.*, Rec. pp. 665-6:

Q. I was calling your attention to the time while you were on the Pennsylvania Railroad, say from 1865 on continually down to about 1870, as to the adaptation of the service then operated on that road to the requirements of the Pennsylvania lines. How far was that service satisfactory to the management of the road or otherwise?

A. I do not know how far it was satisfactory to the management of the road, but our traveling men and the men in the passenger department, who had to do with the passengers, criticised the cars and the character of the service very much, and the matter was frequently spoken of about the necessity for an improved service upon the line.

Q. What was the ground and what the burden of their complaint?

A. The cars were not as comfortably arranged. There was a feeling sometimes, I must say, of insecurity as to the strength of the cars; they were not as thoroughly built as the other cars on the other lines, and in case of any little mishap there was more damage or injury than there would have been if they had been constructed properly. It is hard for me to tell; I cannot bring my mind exactly to the matter in such a way as to explain it clearly.

Q. Did you come to know of difficulty on the part of those agents in holding their own in the competition for travel on other lines?

A. In no other way than by what our traveling men would tell me. The men engaged in the passenger service sometimes would complain, not only to me but to Mr. Thompson and the officials here in my presence, of the necessity for improved service.

* * * * * * * *

Testimony of FREDERICK KNOWLAND, *General Eastern Freight Agent of the Missouri Pacific Ry. System in N. Y.*, Rec., pp. 679-80-81-82-83:

Q. In the course of your business, in your capacity as the general eastern agent of the Fort Wayne Railroad prior to 1869, and after that as the general western agent of the Pennsylvania lines, did you have occasion to observe and to know something of the sleeping car equipments operated by the Pennsylvania lines prior to 1870?

A. Yes, sir.

Q. Did you come to have a knowledge and acquaintance with the equipment of the Central Transportation Company on those lines prior to 1870?

A. Yes, sir.

tice in this cause, for they exhibit the fictitious nature of the so called "plant," to which such substantial character is wrongly given, and illustrate the extravagance of the valuation put upon it.

Q. Will you state what you know of the character and condition of that equipment and its suitability in 1869 and 1870, for the service required by the passenger business of those Pennsylvania lines? State fully and freely what you know upon that subject?

A. From the time that I took charge of the interests of the Fort Wayne road in the entire East—I had charge of the entire East—of course I had to compete with the New York Central and the New York, Lake Erie and Western from all eastern points clear up to Bangor, Maine. The greatest competition that I had, at least I felt it that way, was our sleeping-car service. * * * In order to compete successfully I had to pay much larger commission to ticket sellers for the business. I really, in a great many instances I paid $1 more than was paid by the lines, the New York Central and Michigan Central, in order to meet the competition.

* * * * " * * "

Q. As I understand, you mean to say that it cost you more to secure the business by reason of this equipment?

A. Yes, sir; I said frequently to Mr. McCullough and Mr. Scott both, that if I had proper sleeping car equipments it would save thousands of dollars, that I had to buy business.

Q. Who was Mr. McCullough, and who was Mr. Scott, of whom you speak?

A. Mr. McCullough was vice-president and general manager of the Pittsburgh, Fort Wayne and Chicago road and Cleveland and Pittsburgh. Mr. Thomas A. Scott was for a period of the time I was on the Fort Wayne road, was vice-president during Edgar Thomson's time, and after his death he became president of the Pennsylvania Railroad.

Q. Who was Edgar Thomson?

A. President of the Pennsylvania Railroad.

Q. What were the reports upon this subject of sleeping-car equipments which you say you made to Mr. Scott and to Mr. McCullough? I will ask you first with regard to Mr. McCullough.

Objected to by Mr. Prichard as immaterial and not evidence.

A. Mr. McCullough being my superior officer I was responsible to him to secure the traffic. I made frequent complaints to Mr. McCullough as to our sleeping-car service. It was not equal to that furnished by our competitors. Finally Mr. McCullough asked me to meet him in Philadelphia.

Q. What reason did you give? In what respect was it not equal?

Objected to by Mr. Prichard as immaterial and not evidence.

A. The cars were not up to the standard of the day; they were not equal in every respect with the cars furnished by the Erie and New York Central. Mr. McCullough telegraphed me to meet him here in Philadelphia and go with him to see Edgar Thomson and make a statement to Mr. Thomson. I done so.

There was, in fact, no such "plant" and no such value.

This Court, construing the lease, did not regard this intangible "property," namely, the con-

---

Q. With Mr. McCullough?

A. Yes, sir; Mr. McCullough was present. There was nothing done.

* * * * * * * *

Q. State whether or not after Mr. Scott succeeded Mr. Thomson as president of the Pennsylvaniu road, the same questions arose?

Objected to by Mr. Prichard as immaterial and not evidence.

A. Yes. After Mr. Thomson's death Mr. McCullough and I came East on his special car here, and I brought the matter up in his car, and told him what disadvantages I was laboring under, and he says: "You had better not go on to New York, but come down and see Mr. Scott with me and make the same statement to Mr. Scott as you do to me."

Q. Did you do so?

A. Yes, sir.

Q. Tell what transpired?

Objected to by Mr. Prichard as immaterial and not evidence.

A. We stopped over and had breakfast in the car and we called on Mr. Scott, Colonel Scott, and I made the statement to him and he listened to me very attentively. He said: "Knowland, I will see Mr. Pullman and see if it is not possible to make an arrangement by which we can get the Pullman service on the Pennsylvania road." I was very much gratified to know that he was going to make an effort in that direction, and left for New York on the 1 o'clock train, I think.

Q. Was anything said of any difficulties in the way, or any question of arrangements that would have to be made for that purpose?

A. He said the Central Transportation Company had a contract, but he thought that there could be some amicable arrangement made, that he would see Mr. Pullman and probably some arrangement could be made by which Pullman would lease the Central Transportation Company, or he would get the cars on the road in some shape or other.

Q. Did you make any recommendations whatever as to what service should be put upon the Pennsylvania lines?

A. The Pullman cars were on all the Western lines, and that was another great disadvantage we labored under. All their employees worked right up to Chicago, and of course their influence all tended to place the passengers upon lines that run their cars in there.

* * * * * * * *

Q. You may state what the reasons were which you assigned to Mr. Scott and Mr. McCullough in connection with your recommendation of a change of the service on the Pennsylvania lines?

Objected to by Mr. Prichard as immaterial and not evidence.

A. Because they were better equipped. I stated to him that they were more solidly built and gave better satisfaction in every way; that the service was much better; that is, in other words, the travel—what I looked

tracts and the rights under them, as constituting *a permanent "plant"*; for it dwelt upon and specified its *perishable character* as part of the very evidence which placed it beyond doubt that the consideration

---

at was the travel—all wanted to have a Pullman car; everybody wanted a Pullman car. If the line did not run a Pullman car there was a great drawback.

Testimony of JAS. D. LAYNG, *vice-president Cleveland, Cincinnati, Chicago and St. Louis Railway Company*, and *general manager* of the *West Shore Railroad* (Rec., p. 693).

Q. You were connected with the Pittsburgh and Fort Wayne Railroad were you not, in 1869 and '70?

A. I was.

Q. What was your relation to that road; in what official capacity?

A. I was from 1865 until 1871 superintendent of the Eastern Division, from 1871 until 1874 assistant general manager, and from 1874 until 1881 general manager.

Q. You were acquainted with the sleeping-car equipment of the Central Transportation Company that was operated upon the Pennsylvania lines during the year 1869 and down to the year 1870?

A. I was.

Q. You were on the road at the time of the transfer of the administration of that sleeping car service from the Central Transportation Company to the Pullman Company?

A. I was.

Q. Do you know what the conditions and circumstances were which led to and caused that change to be made; if so, kindly state all you know?

Objected to as immaterial.

A. The equipment in use by the Central Transportation Company was of a very inferior kind, with the exception of a limited number of cars which had been placed upon the line new from time to time, the larger portion being of the old style of cars that had grown up with the establishment of a sleeping car service.

Q. Well, this equipment being then such as you have described, what was the purpose sought to be accomplished by the change in administration of that service which was made at that time?

Objected to because it is not shown that witness had anything to do with that change and because it is immaterial.

A. Being in the general office and in constant communication with the general manager of the Pennsylvania Company's lines, Mr. J. N. McCullough, I had repeated conversations with him, advising him from time to time of the bad service and the low grade of sleeping cars and was probably as near to him as any other officer of the system. He kept me advised from time to time of his intention to make a contract with the Pullman Company if he could, so that, while not a direct party to the negotiations, I was constantly advised of the arrangements as they progressed.

* * * * * * * *

reserved in the lease was *not paid for property*, but for the unlawful covenant of the lessor and its abandonment of its business.

Moreover, it is plain, from the terms of the lease

Testimony of A. J. CASSATT (Rec., pp. 703–4–6–8–716).

A. I was connected with the Pennsylvania Railroad from 1861 to 1883. I entered the service as assistant engineer in the engineering department and served in the various grades of service. I was resident engineer and division superintendent and superintendent of motive power and general superintendent and general manager and vice-president.

Q. What was your connection in 1869 and in 1870?

A. I was superintendent of motive power during 1869, and I was made general superintendent in 1870, I think.

Q. Were you acquainted with the sleeping-car service operated on that road by the Central Transportation Company prior to 1870?

A. Yes, sir.

Q. Did you have knowledge of the change that was made in the administration of that service when the Central Transportation Company was succeeded by the Pullman Company?

A. Yes, sir.

Q. State what the consideration and conditions were which caused that change to be made.

A. It grew out of dissatisfaction with the cars and the service of the Central Transportation Company and a desire to improve it. * * *

Q. Why did the Pennsylvania lines wish to get rid of those cars?

A. Because they were not considered equal to the cars furnished on other roads. They were not equal to the cars furnished and running on the Erie road, or they were not considered equal to the Pullman cars which were running on roads west of Chicago and one or two of the roads east of Chicago. It was found that they were generally not satisfactory to the public or to the railroad company. We felt it in our passenger business, showing the necessity for better cars.

Q. State whether, if any, what representations were made to you or the other officers of the Pennsylvania Railroad Company upon that subject by any of the men connected with the traveling department, the passenger agents, and so on, of the road, and whether or not such representations influenced the Pennsylvania Railroad on that subject.

Objected to as incompetent evidence.

A. There was a complaint by the passenger agents and the men whose business it was to solicit and manage the passenger business of those cars. I cannot specify the occasions, but it was a general feeling in the service that the cars were not satisfactory and not up to the requirements, and that we were losing business on that account.

Q. Do you know what the feeling was and whether representations of that character were made by the officers of the Pittsburgh, Fort Wayne, and Chicago Railway Company?

Objected to for the same reason.

A. I knew that Mr. McCullough, who was the vice-president in charge

itself, that *the parties* thereto had no such conception of the substantial character and permanence of the "plant" represented by these contracts as has found expression and pretense in the claims ad-

---

of the Fort Wayne road, was very decided in his complaints about the condition of the sleeping car equipment. His views led largely to the making of the contract with the Pullman Company.

Q. What did he want?

Same objection.

A. He wanted Pullman cars.

* * * * * * * *

Q. State, as near as you can remember, how soon the old Central Transportation equipment commenced to be superseded and put out of service on the Pennsylvania Railroad lines after the contract made with the Pullman Company, and how rapidly that process proceeded?

A. The process commenced at once after the signing of the contract, and went forward as rapidly as practicable until all the Central Transportation cars had been put out of service and replaced by Pullman cars. I cannot say from memory exactly how long that took. Several years.

Q. Why did they commence immediately to put the Central Transportation cars out of the service?

A. Because the subject of making the contract was to have Pullman cars introduced upon the road and improve the service.

Q. You say that was the object of making the contract. What contract do you mean?

A. I mean the contract between the Pullman Company and the Pennsylvania Railroad Company.

* * * * * * * *

Q. Mr. Johnson inquired of you relatively to the importance to the Pullman Company of getting upon the through lines to the coast from Chicago and to operate such a line as well as the lines west of Chicago. State what you say with reference to how far it was considered important to the Pennsylvania Railroad to get upon the Pennsylvania Railroad the relations of the Pullman Company to the Western traffic west of Chicago?

A. That had a very considerable influence in the making of the contract at that time.

Q. So that the contract with the Pullman Company was regarded as being reciprocally important, not only for the Pullman Company to come to the coast, but for the sake of the Pullman relations to the travel west, which might be sent over the Pennsylvania lines?

A. Yes, sir; the Pullman Company had its cars on the majority of roads; in fact, I think all but one leading west from Chicago, and they could influence the direction of that travel east of Chicago very materially, and that had much to do with making the contract with them, and still more to do with the renewal of the contract in 1885.

* * * * * * * *

The facts shown by this testimony have been confirmed and established in the *Report of the Master* (Rec., pp. 1139–40–81).

vanced under this cross-bill. When that section "EIGHTH," which received the consideration and construction of this Court, in the case of *Pullman Company* vs. *Central Transportation Company*, 139 U. S., 65-66, was introduced into the lease, it proved *the understanding of the parties* that those railway contracts were of a precarious and unstable nature, and that they were severally liable at any time to fall out altogether, and that the revenue under the lease would be largely reduced. It was but an ordinary precaution, therefore, in the understanding of the parties then, that the lease should, in its terms, provide for such extinction of contracts, and that the *rental* to be paid under the lease should be thereupon diminished. There was no such conception then of this "plant" in the minds of the parties, as developed afterwards, in the minds of counsel and of the Court, under this cross-bill, after all the contracts had, in fact, ceased to exist.

Nevertheless, the cross-defendant is held responsible for indemnity as if it had *aggressively* and *tortiously* seized upon and appropriated and wrongfully destroyed a permanent and established business of the cross-complainant *without any fault or concurrence of its own*. Of course the cross defendant denies that it ever became lawfully amenable to any such measure of responsibility.

Assuming, however, for the purposes of this argument, that the cross-complainant may recover the value of such property as was actually transferred by it to the cross-defendant under and for the purposes of this lease, we may consider how much of what it has been charged with by the Court may be admitted to have been so transferred and received by the cross-defendant; for so much as is thus admitted may be eliminated from the discussion which we may confine to the residue. It may be admitted that we received all the property which was *susceptible of manual transfer and physical delivery*, and which was *actually so transferred* and delivered. That includes the cars and their equipment, and also in-

cludes the sum of $17,000 in money. These items may be conceded, with the single exception that we think the valuation of the cars and equipment is somewhat higher than it should be.

Such suggestions as we care to make upon the subject of the patent rights assigned may be best made here. Those patents have been valued at $266,000 (Rec. p. 1169), and the amount of the decree is increased by that sum; but it was error to allow anything for them. They were never used, and had absolutely *no* value except so far as they gave superfluous protection to the use of the railway cars which had already been built under them. That value, whatever it may have been, was *included in the valuation placed upon the cars themselves.* In the Master's report is the following statement:

> "No revenue appears to have been derived from the use of these patents, and they have long since run out. The only use to which they were put by the Pullman Company was in connection with the old Central Transportation Company's cars and equipment."

We may concede, then, with the money, a manual transfer of the cars and equipment. As to every other element of the so-called "property" which has entered into the aggregate of this decree, we deny that we have ever *received* it, or *used* it, or that we can be made *lawfully* chargeable for it; and insist that the decree is excessive and erroneous by the total amount of whatever is included therein on account of such "property."

(*a.*) It seems perfectly obvious that this body of so called "property" which the cross-defendant is held by this decree to have received, and for which it is held accountable at a valuation equal to the total market value in 1870 of all the shares of capital stock of the Central Company, and which is measured in value by that standard on the ground that it included all the elements of value *represented*

by that total capital stock, was never transferred by the cross-complainant nor received by the cross-defendant. The judgment of the Court below as to what constituted "the property" transferred, and the foundation of the decree are in this respect fictitious in fact and in law.

No contracts, or property represented by contracts, or other *incorporeal* rights, were or could be transferred to the Pullman Company by any act of the Central Company; for such transfer of incorporeal property is effected only *by operation of law*, and the law can never thus *give effect* to what the *law prohibits*.

The contract of lease and its assignments were void and ineffective for any purpose. This Court said of the lease. It "is not voidable only but wholly void and *of no legal effect*. The objection to the contract is not merely that the corporation *ought not* to have *made* it, but that they *could not make it*" (139 U. S., 59).

So the objection to these acts of *assignment* of contract is not that the company *ought not* to have done them, but that it *did not do* them, for it *could not do them*. The Court below seeks to avoid any *apparent* direct enforcement of the undertakings of the lease. The obligations relied upon here are said to arise *by implication of law* from the lessor's *acts* of *actual delivery*, and from the *possession* and *use* by the lessee of property which was the subject matter of the void contract. But inevitably these obligations are *measured* by *the legal effect* of the attempted transfer and by the *extent* of such *possession* and *use*.

Now, the contract of lease and the assignments of contracts being *void* gave *no* possession or use of any such property, and *transferred no rights*. They were inoperative so that the Pullman Company derived nothing *through them creating either rights or duties*. That is the principle declared by this Court in the words above cited.

Accordingly, it is said that although the lease and

assignments were void and of their own force carried nothing, the Pullman Company nevertheless *actually* acquired the contracts with their rights and powers, and entered *practically* (however that may be explained) into the use and exercise of the *rights* of the Central Company under them; and that it appropriated and absorbed those rights and powers and thereby extinguished and destroyed them.

But, clearly, that is not so. It has never appropriated or absorbed, or exercised or received any of these contract *rights*. They never passed to the Pullman Company from the Central Company, in practical fact or in legal effect. Whatever may have become of them and whatever may have been their status, whether they remained dormant and in abeyance, or were neglected and abandoned by the Central Company, *they never came to* the Pullman Company, and were never exercised or used by it. Clearly they could not be so exercised or used. The Pullman Company was to be found upon the lines of the railways; that is true, but *it was not there by force of any authority existing in or executed by* the Central Company, nor was it there *in the exercise of any rights transferred by it.* The claim is that, in that position on the railways, the Pullman Company exercised, and used up the powers of the Central Company under its railway contracts. The claim is grounded upon and confined to an asserted practical transfer, possession and use of *incorporeal rights* analogous to the possession and use of *physical personal property*, such as the railway cars which were used, and used up. The claim can of course exist only *within the analogies* of such physical property used, and destroyed in the using.

But, under the guise of following this analogy, the case is carried far beyond the boundary of all possible analogies. Of physical property there may be an actual, effective, *manual transfer* by *act of the parties*, though it be in *violation of law;* but *incorporeal* rights depend upon *operation of law* for their transfer, and no analogy exists. Where the con-

tract is unlawful and void, therefore, there can, apart from it, be no effectual transfer of these, practical or otherwise; for such transfer cannot occur except by the operation of law, and the law will not operate to make effective *what the law prohibits.* The argument which finds and fixes a liability for *physical* property *manually transferred* and used up, falls dead when it reaches incorporeal contract rights of which there can be *no manual* transfer, nor any transfer except by the *operation of the law itself.* This is clearly enough true, even of *natural* persons, who do not derive their *existence* from the law, but whose rights and obligations are governed and regulated by law. It is *a fortiori* true of a corporation, a purely *juristic* person, which derives its existence as well as its rights and obligations *from the operation* of law, and, of which, "its charter is its law of nature." To such a person everything is *impossible* which is *out of conformity* with law. All analogies fail, therefore, unless we were clothed by the effect and *operation of law* with the rights represented by the assigned contracts. That being *impossible* we received nothing from and have used nothing *under the assignor.* No obligation to compensation and indemnity can arise *by implication of law* from possession and use of property, when no such possession or use was possible, but, on the contrary, was made *impossible* by the *inhibition* of the very law which is invoked to give rise to such an obligation.

This is not a case where act of the parties alone effected a transfer of these rights and clothed the cross-defendant with their possession and use, *subject merely* to the plain legal duty of the cross-complainant to *reassert the rights* and to *resume* its property and the performance of its corporate duties (*Thomas* vs. *Railway Co.*, 104 U. S., 101). The *rights* never passed at all. The Pullman Company never acquired them, and it never acted under or used them. As we have already said, only the *operation of law* could make effectual a transfer out

of which the implied obligations asserted by this decree could arise; but "*the law never implies an obligation to do that which it forbids the party to agree to do.*"

> FIELD, *Ch. J.*, in *Zottman* vs. *San Francisco*, 20 Cal., 96.

The lease under and in pursuance of which this alleged transfer was made was held to be void, in distinct recognition by this Court of this very principle. This Court, in its opinion, 139 U. S., 59, said:

> "A contract of a corporation, which is *ultra vires*, in the proper sense, that is to say, outside the object of its creation as defined in the law of its organization, and therefore beyond the powers conferred upon it by the Legislature, is *not voidable only, but wholly void and of no legal effect.* The objection to the contract is not merely that the corporation ought not to have made it, *but that it could not make it.*"

This principle is stated again in *Jacksonville, &c., Ry. Co.* v. *Hooper*, 160 U. S., 514-524-530. In *Cal. Bank* v. *Kennedy*, 167 U. S., 368, 371, also this Court held that by an illegal purchase of stock the bank *did not become a stockholder*, and so the *liabilities* of a stockholder *did not attach to* it (see page 113 *post*). And this Court cited with approval the case of *ex parte Liquidators*, L. R., 8 Ch. Div., 370, where in a like situation it was held that the party "*had never in fact become a shareholder.*"

These are no mere abstractions of philosophy, but a substantial ground of practical relations. Old, settled principles of the civil law, they are also familiar principles of our common law and equity. The livery of seisin of incorporeal things was not *necessary* because it was *impossible.* They are inherent elements in every code of logical and civilized law. A classic mode of removing Gordian difficulties might commend itself to the Court below for con-

venience and simplicity. A stroke of arbitrary power may remove an obstacle that justice and reaon refuse to disengage; and the practical effectiveness of a *dictum* may avoid the inconvenience of finding a reason. The considerations above advanced are disposed of with facility by the Court below, as follows:

> "The argument drawn from the invalidity of the lease, that this instrument did not transfer this description of property, seems to be fallacious. The lease did not transfer any description of property. It was ineffectual for every purpose. The *acts of the parties*, however, *transferred* the property, the *intangible as fully and effectually as all other.* * * * The *obvious answer* is that the Pullman Company *got* the use and benefit of these contracts *as completely as it did that of all other* property named in the lease. * * * The lease under which the parties acted was void, but this *did not render the acts* void."

But whether this Macedonian method is the approved method of modern courts of equity is perhaps one of the questions which this record presents. As above shown, the Court below said: "The *acts* of the parties, however, *transferred* the property, the *intangible as fully and effectively* as all other. * * * The lease under which the parties acted was void, but this did not render *the acts void.*" But we submit that the considerations which made the lease void, made the attempted acts *impossible.* They were ineffective, and transferred nothing. This Court, as we have already shown (p. 97, *ante*), says that the objection to an *ultra vires* contract is *not* that the corporation *ought not* to have made it, but that it *could not* make it. These attempted acts of assignment were such as the corporation not only ought not to have done, but *could not do;* and surely what it *could* not do it *did not* do.

What, then, was *possible*, whether lawful or not, on the part of the Central Company in 1870? Simply

this: It could cease from the conduct of its business of transportation; it could abstain from and abandon the exercise of its rights under its railway contracts; it could abandon the lines of the railways; it could lie dormant as to its own activities, and suffer the railways and other persons, without opposition, to make such new arrangements as they chose. It could *covenant* to do all these things, and *could do* them. But it could not *keep* a covenant to *assign* all its contract rights, for the covenant being *void*, the assignment would be *ineffective* and the rights *would not pass*. It could not *transfer* its contract rights and *bind the railways by that void transfer*. It could not, *of its own force*, put another party upon the lines of the railways and *enable it to operate a service there*. In the actual case *it could not put*, as it is assumed to have done, the Pullman Company *into its own position under its contracts* on the railways, for that it had neither the right nor the power to do. If the railway companies had refused to admit us, we could not have gone upon the lines. If, being there, the railway companies had been inclined to put us off, the Central Company *could not have maintained us there*. Neither its contracts nor their assignment, nor any thing whatever which we received or derived from the Central Company, established us in any right on the lines, or confirmed or maintained our position there for an hour. The Central Company withdrew in legal effect from the lines and *abandoned* the service, that is true; but it could not, of itself, put the Pullman Company into position there, and *it did not*. But what the Central Company could not give it, the Pullman Company *received from the railway companies*, and accepted at their solicitation. The presence of the Pullman Company on the lines of railway grew out of the desire of those railways to obtain the Pullman connections and service, and was the result of the affirmative intervention and procurement of the railway companies. This ought not to be overlooked, for it has been *established* by un-

contradicted testimony in the record, and the Master has been *constrained to so find and to report that fact* (Rec., pp. 1130–40).

The *lease*, therefore, was ineffectual to pass any title or right whatever, to *any sort* of property, and the same is equally true of the various *assignments of the contracts* which were a part of the same transaction. The result is that no such *corpus* of property was ever in legal effect transferred by the Central Company or received by the Pullman Company. No railway contracts *valid and obligatory in favor of the Pullman Company upon the railways* during the original or the extended life of the Central Company, or during the continuance of any patent rights, original or extended, or *for any other period whatever, were ever received* by the Pullman Company. The Central Company had *definite contract rights* for fixed and long periods of time and enforcible against the railway companies. The Pullman Company *did not acquire* those, and the Central Company *did not "part with"* them. The Pullman Company *got nothing enforcible upon the railways* either specifically or by damages. It acquired at best but a *precarious* status, *terminable and destructible at any moment* by the Central Company itself *or by the State*. The attempted assignments passed no title, and *no legal rights*. Now that was *not open* below to argument, for it had been *adjudged* between these parties. Whatever conclusion the Court arrived at it should have been one consistent with this situation. *These contracts were never binding upon the railways on behalf of the Pullman Company for any period of time whatever*. There was never a moment when the Central Company might not have repudiated all that it had done or agreed to do. It might at any time have resumed its cars and business, and it might have insisted, as against the railway companies, upon all rights which it had under its contracts; nor could the Pullman Company have had any remedy or redress. And in the light of the opinion of this Court

it was always its legal *duty* thus to reassert and resume its rights.

There was never a moment when the entire transaction might not have been disaffirmed and set aside by the Central Company or by the railway companies either or any of them, and also by the State on the intervention of its officers. So the Pullman Company *did not succeed to the rights* which the Central Transportation Company had. *It did not, by any act of* the Central Company, *acquire an equivalent position.* The Pullman Company as assignee *could not have enforced a right under any of these contracts.* It is true that some of them in terms ran between the several railways and the Central Company and its assigns; but that means assigns under a lawful assignment, and this assignment has been held to be an unlawful one and void. It was doubtless such an act as would have enabled the several railways, had they been hostile to it, to rescind the several contracts altogether. In any event, it is *certain that no railway was bound* to the Pullman Company *by force of anything done by* the Central Company; and the Pullman Company *acquired nothing and could enforce nothing* against anybody under the assignment.

The *consideration that induced* the assent of the railway companies to the entry of the Pullman Company service upon their lines was, therefore, a consideration *that emanated from and belonged to the Pullman Company.* It was, if we may speak of "property" as the cross-complainant does, *the property of* the Pullman Company, and not an element derived from the Central Company at all. So the Master has found and reported (Rec., 1181). The Central Company gave to the Pullman Company neither the right nor the permission.

Now, it is obvious that neither what the Pullman Company actually received nor what the Central Transportation Company could actually transfer *has ever been the subject of valuation by anybody.* The Court held the Pullman Company account-

able for, and directed the Master to inquire into the value of, something *altogether different.* There has been a valuation of what the Central Company *itself had* in 1870, and which may have been represented *to it* by the value of its capital stock; but it was error in the Court below to hold that the Central Company "parted with" that to the Pullman Company; and of what the Pullman Company *actually received*, in fact and in law, there *has never been any valuation* whatever *either directed or made.* What has been *appraised* the Pullman Company *never got;* and *what it got* by act of the Central Company, has *never been appraised at all.* The value of the actual *status* acquired by the Pullman Company was not what witnesses appraised before the Master, nor what was represented by the market value of the entire stock, nor was it "the going concern" which has been valued and with which we are charged by this decree. Who, in this record, has given testimony that the precarious *status* that could be acquired through the acts of the Central Company was worth in 1870 the amount that has been awarded by the decree? Where is the evidence in this record that *not* what the Central Company *itself had*, but *what it could sell*, and "part with" by this transfer, was worth the sum appraised by the Master? Who has testified that the value in the market of what the Central Company *actually could have "parted with"* to the Pullman Company *would be measured by the market value* of the entire stock of the Central Company? Who has testified that in 1870 *any one would have paid* the amount of this appraisal *for such an assignment* with the right and *duty* of sudden cancellation and termination by the Central Company itself, or by the State, and *with no obligation on the railways to substitute the assignee or assurance that they would do so?* Who would have agreed at the same time to pay the amount of this appraisal, and *also to pay* the Central Company *all the net earnings that might be made during such time as the*

possession should remain undisturbed? The very suggestion seems to illustrate the anomolous and monstrous character of the decree to which the appellant has been subjected. There is *no testimony* on that subject in the record, and there is *no appraisal by the Master* of such value.

That the Central Company ceased the conduct of its business of transportation and withdrew from the lines of the railways and interposed no obstacle or opposition, while the Pullman Company by arrangement with the railway companies substituted its service upon their lines, may be entirely true; but *this brings us directly to the inevitable conclusion* that the Central Company could not make its mere withdrawal from the railway lines and abandonment of its business and the neglect to interpose opposition *a basis of recovery of compensation therefor.* That was not property. The power to lie thus dormant and inert cannot be deemed part of "the plant." What difference can there be in point of illegality between the Central Company's *refraining* from *doing* its public duty and conducting its corporate business, and allowing instead another to perform the public service and to absorb that business, and an *express agreement* to do that very thing? It is the *doing* of the thing which is unlawful, and which *makes the covenant* to do it void and *unlawful.* The Court cannot aid it to do indirectly what it could not lawfully do directly. A contract to do that very thing would be void and unenforceable, because unlawful; but it would be unlawful, because the doing of the thing would itself be unlawful. There *can be no recovery of compensation*, therefore, for *the doing it*, any more than upon an express *contract to do it.* It represents in no sense "property" or a *right transferred.* The decree, therefore, not only charges the Pullman Company with compensation for so-called "property" which it never received from the Central Company, and which that company never parted with, but it *includes compensation* for that same

illegal element for which this Court has expressly declared compensation cannot be allowed. That all this is inevitably included by the decree is obvious, because the estimate is general of the *value of a transfer of the entire property* and resources of the Central Company, and is determined by the market value of its entire capital stock. It comprehended everything corporeal and incorporeal which went to make up the total resources of the Central Company's "plant" as a "going concern," including that *act of complete divestiture* of itself of all its corporate property and resources *which disabled it* from conducting its business and discharging its corporate duties, and for which we *agreed* to pay and did pay "rent."

(*b.*) For another clear reason the contracts (and the patents also) should have been excluded from the valuation adopted and embodied in the decree, and it was error not so to exclude them.

This decree, under the theory upon which it is based, gives all the *earnings* derived from the use of the so-called "property" of the cross complainant transferred under the lease, and *includes the railway contracts* in the body *of property* so held to have been transferred, and consequently *a capitalized valuation of those contracts* is included in the amount of the decree.

It seems very plain that such a capitalized valuation of those contracts cannot justly be given by the decree if the earnings made under the authority of them are also given, because in their analysis the contracts represented merely *a right to make those earnings* and were *exhausted in making* them, and would inevitably, by mere lapse of time, presently cease to exist.

The *value* of a terminable contract itself and the *earnings* under that contract, namely, made by authority of it, are *not two* separate things. They are one. When any earnings are made under the authority it confers, the contract is *pro tanto* gone.

Day by day also it diminishes and expires. The *abstract* value of a *contract* is simply the value of the earnings *not yet made*. A capitalized valuation of the *contract* is a capitalized valuation of the earnings to be made. The earnings and the contract are the same thing, for the contract is but *the opportunity to make the earnings*. To capitalize the contracts as of an independent value, and then give the earnings, the *making of which must consume the contract*, even in the hands of the Central Company itself, is to give them *twice*. If the Central Company had itself made the earnings, the contracts would equally be exhausted and gone. And the contracts would have equally expired and gone out of existence whether used and availed of by any one or not. When the cross-complainant gets the earnings made under its contracts *it gets all* that in the nature of the case *it could ever have had* from those contracts *if it had never parted* with them at all. From the very nature of the case they have in the earnings everything out of this property which they could have had *if they had kept it all in their own hands*. When they have gotten the earnings there is a complete restoration of the *status quo*. In whatever form one gets *the product of the use* of these contracts, that product represents the contracts in their entirety. The contracts themselves were exhausted in producing this product. Why, then, should that company have all the earnings made under the contracts, and also a capitalized valuation of the contracts themselves as of 1870, as if those contracts were permanent property; as if, for example, they were land or a railway road-bed that would remain unimpaired for the making of further earnings?

By the hypothesis of the decree, if the cross-defendant received the property it did so *only for the use of* the cross-complainant (Rec., p. 1196); and so it applied and expended the property, in getting the earnings which it accounts for, *precisely as that property must have been applied and expended by*

the cross-complainant itself in exercise of the same contract right to make earnings.

(*c.*) It is plain that the Pullman Company is charged with the value, *as property*, of what it never received, because it is charged with all value of any sort represented by the aggregate value of all the shares of capital stock of the Central Company. The ownership of *all* the shares of the capital stock, however, would carry with it *all the franchises* of that corporation, and the total value of the capital stock includes the value of the franchises as much as of any other asset of the corporation, and this value is, therefore, by the decree charged to the Pullman Company. The right to be, and to continue to be a corporation, and as such to receive all lawful revenue and to distribute it, was to the shareholders one of the most important and valuable franchises and assets of the Central Company, as it is of any corporation; for every corporation includes its franchise among its assets represented by its capital stock. But it was not assignable, and was never "parted with" by the Central Company. Nevertheless it was included by the Court in the aggregate upon which it based its decree, though the shareholders of the Central Company retained all their capital stock and with it this franchise. The Court disposes of this with facility, and says (Rec., p. 1195):

> "The assertion that the valuation includes
> "the value of the transportation company's
> "franchise is *not well founded.* It is true
> "that the property is valued at its worth *to*
> "*the latter* company, in view of the right to
> "use it as the company did. *This right* the
> "Pullman Company *could exercise* by virtue
> "of *its* franchise, and *did not therefore need*
> "the Transportation Company's."

Why, on the other hand, then, should it *pay for* it? Neither did the Transportation Company "part with" it, nor the Pullman Company acquire it.

Nevertheless, it is charged with its value, and that value is included in the decree, against which no credits are allowed and upon which more than ten years' interest is accumulated. If the Pullman Company did not "*need*" it and the Central Company did not "part with" it, it is error incontestably to include the value of it in this decree.

And *manifestly the value of this franchise was very considerable.* Practically it represents this decree. For this same franchise which was thus reserved to the Central Company and not "parted with" has enabled that company *to appropriate the $3,960,000* which we have paid it. It preserved to that company also the right at all times to repudiate and set aside this lease, which was illegal and void because in violation of public policy. In retaining this franchise it retained, moreover, what has *enabled it to bring this suit and obtain this decree.* If this decree is proper, and the amount of it be added to the sums we have already paid, it is plain the value of that franchise in 1870, for which we are charged in the capitalization, was something appreciable. If we had actually in 1870 purchased every share of the capital stock of that company, with the total value of which we are now charged, *we should never have had occasion to pay those millions* to the Central Company, nor would it have been able to bring this suit and expose us to this unmitigated pillage; all of which is proof conclusive that there never was transferred to the Pullman Company *all* that was represented by the total value of all the shares of capital stock; and that, perhaps, the Court below was *mistaken* in what it said, and that in fact the Pullman Company, dealing with the Central Company, *did* "*need*" that franchise, which it is required to pay for.

The Court, therefore, treats as "property *parted with*" by the Transportation Company and received by the Pullman Company, elements which were not proper to be accounted as "property" at all in making up the decree.

(*d*). The Court treats as property taken possession of and destroyed by the cross defendant, the *business* of the Central Company, and charges the Pullman Company with its value in the decree, because it was "lost" by the Central Company through the proceedings under the lease. It was not "property transferred," and for other reasons no right of indemnity such as is claimed can exist here. The decree is erroneous because it awards compensation to the cross-complainant for what it lost, if at all, by its own neglect and the breach of its own legal duty. The lease being void, and all the acts of the Central Company under it illegal, it was its duty at all times to re-assert its rights, and to resume the possession of its property and the performance of its corporate duties. (*Thomas* v. *Railway Co.*, 104 U. S., 101). Its passivity and acquiescence in the situation were equally illegal with the lease itself. It has no right to indemnity or compensation for its own defaults. The rule is well settled that a party cannot recover for injury which it was in his own power to prevent, but which he nevertheless suffered and permitted.

In Sedgwick on the Measure of Damages, Sections 201 and 202, it is said:

> "The same principle which refuses to take into consideration any but the direct consequence of the illegal act, is applied to limit the damages where the plaintiff, by using reasonable precautions, could have reduced them. * * *
>
> It is frequently said that it is the *duty* of the plaintiff to reduce the damage as far as possible. It is *more correct* to say that *by consequences which the plaintiff, acting as prudent men ordinarily do, can avoid, he is not legally damaged.* Such consequences can hardly be the direct or natural consequences of the defendant's wrong, *since it is at the plaintiff's option to suffer them.* They are really excluded from the recovery as *remote.* In this view the doctrine would rest on the intervention of the *plaintiff's will* as an inde-

pendent cause. *Ad hoc* he is not damaged by the defendant's act, *but by his own negligence or indifference to consequences.*"

So in *Loker* vs. *Damon*, 17 Pickering (Mass.), 288, SHAW, Chief Justice, said:

> "Suppose a man should enter his neighbor's field unlawfully, and leave the gate open; if, before the owner knows it, cattle enter and destroy the crop, the trespasser is responsible. But if the owner see the gate open and passes it frequently, and willfully and obstinately or through gross negligence leaves it open all summer, and cattle get in, it his *own* folly. So if one throws a stone and breaks a window, the cost of repairing the window is the ordinary measure of damages. But if the owner suffers the window to remain without repairing a great length of time after notice of the fact, and his furniture, or pictures, or other valuable articles, sustain damage, or the rain beats in, and rots the window, this damage would be too remote."

Dodd v. *Jones*, 137 Mass., 323.
UnitedS tates v. *Smith*, 94 U. S., 218.

If the business of the cross-defendant has suffered, it is its own fault. If its cars have become dilapidated, it is its own fault. It could at any time have taken and given them all possible protection. They have been offered, and it has refused to receive them. We have asked the Court for a receiver of them, and for their sale, but this, too, has been refused under the objection of the cross-complainant. In *Bartley* v. *Grove et al.*, 21 W. N. C., 204, in an action for rental value of a store, real estate which the defendants had occupied with some machinery, &c., it was claimed they had destroyed the property and that it had become dilapidated, and the Supreme Court of Pennsylvania said:

> "The plaintiffs cannot recover the *loss of the capital value* of the property; they cannot recover anything for the *dilapidation or destruction* of it, for they might *have kept it up.*"

Of course, the only relation between these parties was such as was produced by whatever *actual* transfer and delivery of property occurred for the purposes of the contract of lease. Now, such *act* of transfer and *actual delivery* was, so far as it was possible for it to occur, *the thing in which*, as has been already stated, the illegality *inhered*, and which made the lease void because it was a contract to do it. Such actual transfer (assuming it for the sake of the argument to have occurred), being legally inhibited and void, could create no *fiduciary* relation, nor any relation out of which *contracts* could be *implied* for an *unlawful use* of the property for benefit of the assignor.*

The proposition of the Court below that the Pullman Company took possession and held and used the contracts or property FOR the Central Company up to 1885 is in the teeth of the judgment of this Court. It is as this Court held in *California Bank* v. *Kennedy*, "but *a reiteration* of the contention that" the attempt to assign the contracts and property "under the circumstances disclosed was *not void, but merely voidable.*" This Court said: "It would be a *contradiction in terms* to assert that there was a total *want of power to assume the liability, and yet to say that by a particular act the liability resulted.*"

Cal. Bk. v. *Kennedy*, 167 U. S., 371.

Nor could contract be *implied* for indemnity to the assignor for an interruption, *to which it consented*, of business which it unlawfully aban-

* But this is precisely what the learned Judge below says *did* occur. He says, Record, p. 1196: "The ownership of the property remained in the Transportation Company, the Pullman Company TAKING POSSESSION AND HOLDING IT FOR THE FORMER, paying a stipulated price for ITS USE UP TO 1885." If that is not *a trust* for the *performance* of the void leases, until disaffirmed, what is it? And if the Pullman Company *was holding* the property *for the use of* the Central Company, why should it pay "a *stipulated price for the use*? And if it was "paying a stipulated price *for the use*, why must it account for the earnings? How could the amount of the earnings become *material at all*?

doned. It was at all times the duty of the Central Company to resume its property and its business. It cannot, consistently with any legal principle, recover compensation for losses which it passively permitted to occur, which it was within its own power to prevent, and which it was its legal duty to prevent. Throughout this cause the Court below has taken for its basis the assumption that the Pullman Company has been in all transactions between the parties *an aggressive wrongdoer*, appropriating property *in invitum* and destroying the business of the Central Company, while that company was *not even in pari delicto*. The decision of this Court *prohibits* such an assumption as this. The Pullman Company has *received* nothing, and has *done nothing*, except by the consent and participation of the Central Company; and it was *that participation* which was held unlawful. There is here, therefore, a fundamental error, which runs through all the rulings of the Court below and undermines all the principles and computations invoked for its decree.

At the risk of some repetition we venture to restate what we believe to be the law which governs this situation. The rule that the cross-complainant cannot recover for damages which it might have avoided, and which it was its legal duty, and, in the language of the authorities, its *social* duty to avoid, is made insuperable here (*Miller* vs. *Mariners' Church*, 7 Me., 51), by the fact that, so far as the business of the Central Company can be said to have been broken up at all, that result has occurred, not by the fault of the Pullman Company, but with the co operation and participation of the Central Company itself. No indemnity can in such case be asserted against the cross-defendant on the basis of *fiduciary* obligation, for no fiduciary relation could arise out of the *mere* possession and use, if any such there was of property *not already impressed with a trust*, even though that possession and use were tortious

(*Root* v. *Railway Company*, 105 U. S., 215; *Monk* v. *Harper*, 3 Edw. Ch., 111; *Doyle* v. *Murphy*, 22 Ill., 508; *Wilson* v. *Kirby*, 88 Ill., 572). But even if that were otherwise, the concurrence and participation of the *cestui que trust* itself would eliminate all equity from any claim of indemnity it might assert.

If the business of the Central Transportation Company was destroyed, the Pullman Company was no more chargeable with that result than the Central Company itself. The Central Company was a participant, *at least to an equal* extent, in whatever was done; for it is not to be overlooked that it has been adjudged that it was for *violation of duty on the part of that company* that its agreements with the Pullman Company were illegal and void. It was *its* own attempt to assign and transfer its property; *its* own abandonment of the conduct of its business; *its own act* in thus disabling itself from the performance of its public duty which made its agreements with the Pullman Company void, and *which has brought these parties to the actual situation in which they stand.* How can the Central Company upon that basis charge the Pullman Company with damages for such abandonment and interruption of its business, or for *the consequences of its own failure* to reassert its rights and resume its business? Even under the principles of the trust, which, as we shall see, is, under the decree of the Court, established and given operation in this case, such responsibility on the part of the cross-defendant is precluded. A *cestui que trust* can have no redress from a trustee for a breach of trust which the *cestui que trust* has *acquiesced in or permitted without objection.*

It is now very plain that:

The value of the total capital stock, estimated by the market price of certain shares, was no proper measure in 1870 *of the value of such property.*

The market price at which a few shares of stock appear to have been sold at or about the time of the making of this lease, was assumed as showing the value of the aggregate of all the shares of the capital stock of the Central Transportation Company. All experience, however, shows that nothing more untrustworthy could be assumed.

The price at which are sold a few shares of stock offered from day to day for sale, and which thus in small quantities change hands, is no criterion of the price which the market would pay *for the whole amount of the capital stock*. If, not a few shares only, but the whole stock had been at once thrown upon the market, there is no ground to imagine that it would all have gone for the price assumed.

Beyond all this the market price from time to time of shares of capital stock is *not evidence tending to show* the actual value of the assets and resources of a corporation. The Master, whose view was confirmed by the Court, said "the value of the stock on the street is a positive indication of the estimate placed on the property by the public," and, therefore, of its value (p. 86, *ante*). The "public" has no superior knowledge of such values. It is notorious that stocks fluctuate between wide extremes in the market within short spaces of time, and no indication of *actual value* is ever thought to be represented by the variable figures of the market. These market prices are usually governed by extrinsic conditions, and seldom by considerations of the actual value of corporate property. And it is notorious that the stocks of corporations actually insolvent are quoted for long periods at prices above par in the market.

In addition to all this, it is obvious that this total value of all the shares of capital represented *to the corporation itself* most important elements of value which it had no lawful right or power to *make the subject of alienation and transfer*. It could not *furnish the consideration involved* in the price represented by the total value of all its shares of capital stock *without including* all those franchises and other elements which were not susceptible of

transfer and sale, *or without including* in lieu of them the unlawful withdrawal from business, and abandonment of public duties, and the transfer of their performance to another corporation, and other illegal elements which could not lawfully be made the consideration of any contract whatever.

As has been shown, the lease, the assignments of contracts and all the acts of the cross-complainant under them were unlawful. They gave the Pullman Company no rights by transfer or otherwise which were obligatory on anyone. They bound neither the railways nor the State, nor the Central Transportation Company itself. The result is that the market price of a few shares of stock was *no evidence* of the market value of the total stock in a body; and however that might measure the value to the Central Transportation Company of all that *it had*, it gave no measure of the value of *what it could effectively transfer and secure* to the Pullman Company as its assignee.

Seventh.

It was error in the Court below to hold that the cross-complainant was entitled, under any circumstances or conditions, to recover earnings; and in not holding that the obligation, if any, of the cross-defendant was limited at all times to interest instead of earnings.

Of course, it is and has always been contended that the cross-complainant has no right to recover earnings at all, and that the obligation, if any, of the cross-defendant, is limited to interest instead of earnings or profits. The rule is thus stated in Sedgwick on Damages, Sec. 178:

> "If compensation is asked for destruction, that is, *for the whole value* of the property, it is *upon the theory* that the plaintiff's entire interest in the property ceased at the time of

> the injury, and was replaced by *a right to have the value of the property in money.* Since, therefore, the plaintiff no longer has title to the property, he can no longer claim that he might make a future gain from it and his *recovery is limited to the value* of the property at the time and place of destruction. *with interest.* If the injury does not extinguish the plaintiff's title, he has a right to compensation for the loss of any use he might rightfully make of the property, *subject to* the other general principles of *the law of damages.*"
>
> See also Keener on Quasi Contracts, p. 166.

Where a plaintiff, therefore, asks for and takes judgment for "the whole value of the property," his recovery is necessarily limited to the amount of that money judgment with interest. We are here called upon and required to pay the "whole value of the property," which it is said was *received by us* in 1870. That value in 1870 was found by the Master. The Court declares that it was the same in 1885. "Upon the theory" by which *alone* the law permits recovery of "the whole value," the plaintiff would be entitled to *interest* on the judgment. But here the Pullman Company is required to pay all the earnings of its business to the Central Company from 1870 to 1885, and *interest thereafter* on the value fixed by the Master as of 1870, besides the capital sum represented by that valuation.

One cannot procure the substitution of the principles and methods of courts of equity for those of the courts of law by attempting in a court of equity to pursue a *legal title* to specific property, or to enforce a *legal right* to damages or compensation for its detention or for its destruction or injury (*Parsons* v. *Bedford*, 3 Pet., 433; *Scott* v. *Neely*, 140 U. S., 110; *Buzard* v. *Houston*, 119 U. S., 352; *Gordon* v. *Jackson*, 72 Fed. Rep., 87; *Kilian* v. *Ebbinghaus*, 110 U. S., 572; *Cates* v. *Allen*, 149 U. S., 451).

Even if it be assumed that to any extent whatever earnings might be recovered, the *total* earnings

made by the Pullman Company in the present case ought not to be given directly over to the Central Company, because it is not merely an uncertainty whether that company could have made those earnings, but the evidence and the report of the Master make it perfectly clear and certain it *could not have made them*. The evidence shows the railway companies were extremely dissatisfied with the equipment of the Central Company and *its conduct of the business*. "Their cars," said Mr. Scott, "were not satisfactory, and their business was not being done satisfactorily" (Rec., p. 1140). The equipment and the service were driving business away from the Pennsylvania lines to the lines of their competitors (Rec., pp. 1139-1140). The *railways were* at that very moment *devising this scheme to substitute* the Pullman service and *to get the management* and the *obsolete equipment* of the Central Company *off from their lines* (Rec., pp. 1139-1146). They would not, in any event, have permitted the Central Company to remain on their lines and continue there the business which they claim to have transferred to the Pullman Company. If the Central Company had been permitted to remain, it *could not have made the earnings* which the Pullman Company made; for, on the one hand, *it was at that time actually driving traffic from the railways upon which it operated*, and, on the other, the Pullman Company, by reason of its important connections, was *able to throw upon the lines* formerly operated by the Central Company *a vast amount of traffic* which would never have contributed to the earnings of the Central Company. The earnings made by the Pullman Company in its administration of the service are *no criterion whatever* of the earnings that would have been made by the Central Company had it attempted and been permitted by the railways to continue the conduct of its business.

The valuation made by the Master of the Central Company's so-called "property" in 1870, and which

has been adopted by the Court and embodied in the decree, was determined on the basis of its *earning capacity;* and the appraisal was greatly enhanced and placed above what would be the intrinsic value under ordinary circumstances because of an assumed *capacity of* the company *to make extraordinary earnings* by its use of the very small amount relatively of actual, tangible property in the particular case. The appraisal is based on a valuation of the Central Company's shares at 116 instead of a par value at 100. The *extra earning power*, as an element of value, is thus *capitalized at the outset in the appraisal.* If, therefore, interest should be given, *on the gross value thus capitalized*, the earnings would be represented in the capital and interest, its utmost rights would be in effect given to the cross complainant. To give this *enhanced* capitalization out and out in a gross fund, and then *accumulate the actual earnings* upon that also, is, clearly, to give those earnings *twice.* In such a case the primary valuation is grossly too large, and the simplest methods of mathematics indicate its *extreme injustice.*

If we are to be charged with and to pay over the actual earnings themselves, there ought not to be *also* an enhancement of the valuation of the property itself because of its *capacity to make those very earnings.* When the actual earnings are received the full benefit of that capacity to make them is also received.

Now upon what basis is the extraordinary rule of responsibility asserted here imposed upon the cross defendant? On what basis should it be chargeable in 1885 with the capitalized value in 1870 of contracts and other incorporeal elements, which became exhausted and consumed before 1885 in *making the earnings which are required to be accounted for* and paid to the cross complainant? All the earnings made in the operation of the service are given to the Central Company, though chiefly made, as the Master found, by the use of Pullman cars and

other property and Pullman capital. The Central Company is also exonerated from all that inevitable wear and tear and depreciation of the rolling stock and equipment which would have been inevitable in the hands of the Central Company if it had conducted the business. The Pullman Company, therefore, is required to give up all the earnings, without any compensation for its services, and also to bear all the burden of the maintenance and the ultimate loss of the physical property itself. A trustee guilty of breach of trust would not be subjected by a court of equity to such penalty and burden as this; but, in the actual situation of the parties, we insist that the Pullman Company should have been exonerated from all the loss arising from the inevitable depreciation or destruction of the physical property. Even in a case where a petitioner was held entitled to recover railway property delivered under a void contract of lease and to recover compensation for the *use* of its road and property, including depreciation caused by such use, no right was accorded to earnings and to indemnity against depreciation also (*Farmers' L. & T. Co.* vs. *Railway Co.*, 1 McCrary, 247).

It is an unreasonable and unprecedented ruling which charges the cross-defendant with the depreciation and consumption of property used in making the earnings which are accounted for and given to the cross complainant. The earnings should not be given where the property is thus charged. We ask, therefore, on what basis is this severe rule of responsibility imposed? Assuming that we ever acquired at all the property with which we are charged, we were not *as against the Central Company* wrongfully in possession of it. We did not seize and appropriate it, and we were not trespassers. We were never guilty of any wrongful conversion of it as against that company. We have never denied the Central Company's title nor refused to deliver the property on any demand; and there was never any demand made by that company

until this cross-bill was filed. Consider for a moment how we came in possession, if we ever did, of these contracts or came to have any relation whatever to them. They were put into our hands, if at all, by the cross-complainant itself. It was what the Central Company did in that respect that was beyond its powers, and was unauthorized and illegal; it was the act of the Central Company that was *ultra vires*. So far as the possession of any property was concerned, we were not wrongfully in possession as against that company. We have not appropriated anything violently or fraudulently; there has been no conversion. Nor were we purchasers under any contract to pay any capital sum on credit or otherwise. We took just what was *put into our hands voluntarily* by the Central Company, and if according to the warm argument of the Court below, anything was given us innocently by them, it was *as innocently received* by us. On what footing then is the result to stand which imposes upon us more than the penalties and hardships either of a party guilty of hostile and tortious conversion, or of a trustee guilty of a breach of trust? Only some wrongful assumption at the foundation, or some fallacious process of reasoning, can have led to a result involving such a false and partial view of the relation between the parties and to such injustice.

No right can exist to earnings made from the use of property *not already impressed with a trust* and where otherwise *no fiduciary* relation exists. Such fiduciary relation cannot arise except from *contract*, express or implied; and none can be implied from the mere possession or use of property. *Doyle* vs. *Murphy*, 22 Ill., 508; *Taylor* vs. *Turner*, 87 Ill., 302; *Wilson* vs. *Kirby*, 88 Ill., 572. This is involved in the assignments of error No 15, 18 and 26.

In *Root* vs. *Railway Co.*, 105 U. S., 215, it was claimed that a fiduciary relation arose as to the profits from infringement of a patent right, and

that the infringer was "by construction of law a trustee of the profits." But the Court said:

> "The case is not within the principle, according to which, in certain circumstances, a court of equity decrees a wrongdoer to be a trustee *de son tort*, and exerts its jurisdiction over him in that character. Where a defendant has wrongfully intermeddled with property *already impressed with a trust*, he may be required as a trustee to account for it, as was done in the case of *People* vs. *Houghtaling*, 7 Cal., 348, because trust property may be followed, wherever it can be traced, into whosesoever possession it comes, except that of a *bona fide* purchaser without notice. It is the *character of the property*, and not the wrong done *in converting or withholding it, that constitutes the wrongdoer a trustee.*"

In *Monk* vs. *Harper*, 3 Edw. Ch., *111, the Court said:

> "If the complainant has any *rights as authoress*, either of common law or under acts of Congress, and the defendants have encroached upon those rights by the publication of her book, she must sue them *at law* for damages. So, if they have possessed themselves of the stereotype plates which belong to her, an *action of trover or replevin* can be had. This Court will not entertain a bill for the purpose of *restoring to her the possession* of such articles of property, or *of compensating* her in damages for the deprivation. Nor does this bill, in my opinion, *make a case for an account* against the defendants *of the profits derived* by them from the printing and publication and sale of the work. *It does not show any privity of contract* or dealing between the parties; *no agreement expressed or implied by which the defendant can be held to account to the complainant for the profits of the work.*"

By the authorities, therefore, *no fiduciary relation arises* from the receiving, *retaining or the use* of property thus transferred; nor any more from

converting or withholding it, or from any tort in respect of it.

The decree, therefore, is erroneous which gives all the earnings to the cross-complainant, and applies these earnings in sufficient amount to extinguish all credits due the cross-defendant for the nearly four millions of dollars paid during the period of operation under the lease; for such a result can only be arrived at by raising a trust on an unlawful basis and for the illegal purposes of the void lease. This subject has already been alluded to, *ante*. The decree makes the cross-defendant a trustee for the performance of the services contemplated by the lease and of the earnings made thereby. It gives operation to all the principles that would be operative in the case of a lawful trust relation, and which can operate effectively only through the medium and methods of a trust.

This is illustrated in the conclusion that the Central Company was entitled to treat the Pennsylvania and Pullman railway contract of 1870 as a *substitute* for the various contracts subsisting between different roads constituting a part of the Pennsylvania system, which had been assigned to the Pullman Company (Rec., p. 1170). The lease and the assignments of those contracts were void and ineffective, and nothing whatever of *rights* created by them enured to the Pullman Company. The railway contract in question was made with the Pullman Company by the Pennsylvania Railway Company in 1870 for the fixed period of fifteen years.

But certain assigned contracts under which the Central Company had operated were wholly disregarded and were never acted under at all by the Pullman Company; and it is by holding these assigned contracts, including at least one of those contracts whose duration was held extended by force of the Legislative Act of 1870 to have been incorporated (Rec., p. 1170) by substitution in this Pennsyl-

vania Railway contract, that by process of *subrogation* the right of the cross-complainant is asserted to earnings *during the duration* of that contract, namely, the whole period of fifteen years to 1885. *One point of objection* to the holding that this Pullman railway contract of 1870 was, as to the Central Company, a *substitute* for its own contracts, is, that *this assumes* for its foundation the existence of *a lawful, equitable relation* created by their assignment between the Pullman and the Central Companies, out of which, by implication, contract could spring giving the Central Company a right of *subrogation* to the rights of the Pullman Company under its aforesaid railway contract of 1870. But as under the lease and assignments no rights were acquired by the Pullman Company, no fiduciary relation could arise out of that transaction in order to give effect by subrogation to the assignments, and so to the illegal purposes of the lease (Hill on Trustees, *45; *Curtis* v. *Perry*, 6 Ves., 739; *Nassau Bank* v. *Jones*, 95 N. Y, 124). Nevertheless, the relation assumed is one in which the Central Company is accorded the ordinary *right of election* of a *cestui que trust.* It is accorded a right to elect, whether it will enforce redress against the Pullman Company on the basis of its own original contracts, assuming them to have been assigned and used, or whether it will acquiesce in an alleged exchange, and take the benefit of the fifteen-year contract made between the railway company and the Pullman Company as a trustee.

So, also, as in cases of breach of trust by a trustee, it is given the ordinary election of a *cestui que trust* whether it will take interest on the value of all the property delivered to and used by a trustee; that is, the value of the original contracts of the Central Company, or whether it will take all the profits of the business done by the alleged trustee in the assumed use of the Central Company's rights under those contracts. On what principle are these rights of election founded?

On what principle are these forms of remedy, namely, subrogation and the taking of earnings, founded? What greater, or other, *or different right* would be accorded if a lawful assignment had created a *trust* of the contracts and of the *business?* What greater, or other, or different redress would be given if the Pullman Company were in fact an aggressive wrongdoer throughout, and the Central Company not *in delicto* at all?

It is the established rule, therefore, upon principle and authority, that where compensation is asked and allowed for property at its whole value, the law will proceed "upon the theory" that the original owner's interest ceases and is replaced by the money compensation. This principle involves the result that he has no longer title to the property, and his right is limited to recovery of its value in money with *interest.* Of course this is the only rule consistent with reason or justice; and this has at all times been the contention of the appellant.

Upon this subject, however, the Judge below, in his opinion (Rec., p. 1196), said:

> "It is urged, however, that if the Pullman Company is charged with the property as of 1870, it must be treated thereafter as entitled to the earnings and be credited with the amount subsequently paid as rent. Of course *if it is* treated as *owner* from that date, it could not justly be held accountable for earnings thereafter, and would be liable only for the value, with interest from that date, subject to the credit stated. But *it is not* so treated, and cannot be, *because it would not correspond with the facts,* and would be unjust. The ownership of the property remained in the Transportation Company, the Pullman Company taking possession and holding it *for* the former, *paying a stipulated price for its use* up to 1885.

We hardly know from what direction to approach this statement. The actual *facts* were that the

parties made this contract or lease, or whatever it was "under *the guise* of a lease," and they intended to carry it out. The only action of the Court that would "correspond with the facts," would be such as would carry out this intention. But is it not true that in all cases coming within the rule just cited from Sedgwick on the Measure of Damages (*ante*, page 117), the Court attaches such *lawful* consequences to the facts as constructively the parties ought to incur, and by lawful implication contemplated? So property or business tortiously appropriated or destroyed must be paid for at its value when received or destroyed with *interest*. For the ownership of the property the law substitutes at that date a money demand with interest. It never raises an unlawful trust to effect an unlawful intention of the parties, on a theory that would "correspond with the facts." But that is precisely what the learned Judge below declares he will do. He says that "*of course*" if the Pullman Company is *treated as owner* from the time it received the property, it cannot be held accountable *for earnings*. But he says *it is not so treated;* that the ownership remained in the Transportation Company, the Pullman Company "taking possession and HOLDING IT FOR the former." Thus notwithstanding the judgment annulling the lease, the unlawful intention of the parties in attempting the void and illegal transfer, is to be *carried into effect*, because that, he says, would "*correspond with the facts.*" Such is the plain declaration of the purpose of the Court below.

Now we submit that it was not within the authority of that Court to overrule or expunge the construction and judgment of this Court upon this very contract. But, apart from that, will it "correspond" any better "with the facts" to assume, the theory below, that the appellant was to carry on the business of the appellee as *its trustee or agent?* That it was to do so at *its own expense*, and give the appellee *all the earnings* made, whether *by use of its own capital and property or*

not? Does it "correspond with the facts" to assume that the appellant agreed ever to be an agent or trustee at all? Does it "correspond with the facts" to hold that the appellant *ever undertook to give earnings at all?* If there *were no such facts,* then why might not the Court as far as aught in the pretext it alleges goes, give *interest* instead of earnings? Did appellant in "fact" undertake, *in addition to* yielding all the earnings, that the railway contracts, which were merely rights for definite and limited periods to do business and make the earnings, *should not expire* by lapse of time, and that if they did the appellant would pay for them at a valuation capitalized at the outset? Did it undertake in addition to yeilding earnings that the personal property—implements, carpets, blankets and cars—should not wear out and be consumed in the course of this service of making the earnings, and that if they did the appellant would maintain or restore them, or pay for them at their original value? Was it a fact that the appellant thus undertook, *without any compensation,* to perform all the railway service, uphold at its own expense all rights of property against lapse of time and the inevitable forces of nature, and *give over also all the earnings made in the service?* Could this morally impossible fiction, the most impossible fiction that ever distinguished the administration of injustice, ever seem for a moment in its absurdity to satisfy the mind of any one on the ground that it better *corresponded with the facts?* The Court below was *precluded* from assuming that the sums paid to the Transportation Company as "rent" were paid as a stipulated price for *the use of property* of any kind, and that the total amount should be extinguished as a credit by being offset against earnings during the fifteen years during which such payments were made. That Court knew that it had been held that the chief consideration for which these sums were paid was the unlawful covenant of the appellee that it would aban-

don and abstain from performance of the business for which it was incorporated. That Court had *itself* instructed the Master, that *for that reason* the rent reserved was not a measure of the value of what was demised. Nevertheless, it found a mode of extinguishing these sums altogether. The payments very far exceeded interest upon the valuation placed by the Master, under order of the Court, upon the entire plant of the Transportation Company in 1870. What in view of that fact the Court determined to do was to charge the appellant with all the earnings made during fifteen years, whether made by its own capital and cars or not, and arbitrarily assume that they were sufficient to exceed all the sums of money paid by the appellant upon any account whatever; and it is *by this process* that the Record shows it to have arrived at its decree.

Eighth.

The Court erred in this : that, while holding that it would treat the void lease as executed by the acts done by the parties "up to 1885," *when it alleged the lease was disaffirmed, and that "to the extent its provisions were executed the Court would not interfere," it confined the rule to the mere receipt of earnings and to the payment of rental, and did not hold that other provisions of the lease were equally executed and were not to be disturbed, namely, the act of transfer and delivery of property under the lease, and the expiration and extinction of railway contracts and patents, so that they had no value in* 1885.

By the proceedings before the Master it had become perfectly apparent that no actual earnings,

made by use of only Central Transportation property or capital on the original contract lines of that company and during the lifetime or duration of its several contracts, could possibly equal the amount of money which, in quarterly installments, had, during the fifteen years from 1870 to 1885, been paid as rental to the cross-complainant.

The cross-complainant claimed that it should be allowed all the earnings made by the Pullman Company during the entire fifteen years, though chiefly made by the use of Pullman cars and Pullman capital, merely making to that company an allowance for interest on its capital and for depreciation of its cars, and no other compensation for its performance of the service. But the Master considered that, for the reasons stated in the citation from his report, such a claim was unreasonable and unjust, and could not be supported.

The contention, moreover, of the cross-defendant was, as it now is, that when it is charged with the value of the property when it got it, whatever that value may be held to have been, it became thereby the owner of the property and liable thereafter only for interest on that sum until it was paid; and that it is not upon any known principle chargeable with *the earnings and use of the property itself*. But the *interest* on no conceivable valuation of the alleged property would equal the amount which had already been paid to the Central Transportation Company. Moreover, as this Court had declared, that annual payment was agreed upon and was made for a *far different* consideration from use of property, or from any other consideration that could be taken account of and appraised as "property" of the cross-defendant.

By neither of these processes, therefore, could these payments, amounting without computation of interest, as above stated, to $3,960,000, be expunged. But by declaring in open contradiction of the Supreme Court that the whole sum paid as rental was "a stipulated price for the *use of* the *property*"

up to January 1, 1885; that although "the lease under which the parties acted was void, this did *not render the acts void*" (Rec., p. 1196); that provisions of the lease were *executed* by the parties up to 1885, and that "*to the extent* that its provisions *were executed*, the Court would not interfere"; and then by *confining the application* of this principle to the mere receipt of the earnings of the business on one hand and offsetting the entire amount of rental money paid on the other, the Court below could expunge the large excess paid as rental to the cross-complainant and leave the capital valuation of the property, whatever that might be, still to be paid to the cross-complainant unreduced by any credit, and with interest from 1885. Thereupon the Court declared that it would adopt that method. It declared that the amount to be paid by the cross-defendant was not, as it had *before* laid down, the valuation of the property in 1870, but its value in 1885, when it *asserted* that the lease was *repudiated* and the property *should have been returned;* that it would assume the valuation in January, 1885, to have been the same as in 1870, and that it *had directed* inquiry into the value of the property in 1870 *in order to fix thereby* the amount to be paid for it in 1885. But it is not true that the lease was repudiated or disaffirmed by the Pullman Company in January, 1885. The original bill in the very case he was deciding, which *asked aid of the Court to perform the lease*, was filed over two years later. But the coincidence may be observed that the payments of rental which made up the sum of $3,960,000, which was to be exhausted are said to have ceased on January 1, 1885. By such process the present decree was settled.

But nothing of this was ever suggested or claimed by counsel for the cross complainant, nor were any of these matters ever argued or considered in the progress of the cause. No intimation was ever given that the value to be inquired into before the Master

upon the reference ordered was the value of property existing when the *lease was rescinded*, or that it was ever *in the mind* of the Court to fix *that* value when the inquiry was directed, and when the Court decided that *the measure* of compensation was "clearly" the value of the property *when it was received*. This opens for consideration, therefore, the application by the Court of the principle to which it changed, after the discussion of the Master's report, as furnishing the rule upon which *it had been* proceeding. It compels inquiry as to what was involved in treating as executed all that was done by the parties prior to the assumed avoiding of the lease in 1885, and as to *what acts are to be so held* to be executed, and it opens for the *first time* an inquiry into the value of the property in 1885.

If the acts of the parties under the lease up to 1885 are to be treated as executed, and not to be disturbed, why should that principle be confined to an account of the earnings made, in the conduct of the business by the cross-defendant, and to application in payment of those earnings of the sums of money paid as rental during that period? Why should not the rule be made to include all the *other* matters and things which had occurred and which had been completely performed and concluded, and which were *done in pursuance of the provisions* of the lease? Why should it not include *all* transactions *severally complete in themselves*, and of which nothing remained executory? Clearly, if this principle is made operative in this situation, it should include the *transfer of property under the lease*. Why was not the transfer of property as completely executed as the receipt of earnings or the payment of rental? It should certainly include all the *consequences* which were *inevitably incident* to the conduct of the business done, which the Court *does treat* as executed. It should include the depreciation and wearing out of the railway cars, or other personal property, which naturally occurred in the

conduct of the business and in the *executed* transactions of *making the earnings* thus paid over. It should include the extinction of the patent rights and of the contracts with railways for the running of cars, all of which regularly expired and by lapse of time ceased to exist, and were exhausted in making the earnings precisely as they would have been if the Central Company *had itself conducted the business.*

The truth is, the proposition invoked has no place here at all. When an "illegal purpose has been carried *into effect in a material part,*" and "in a substantial manner" (*Kearley* v. *Thomson*, 24 Q. B. Div., 746); "where the parties have *so far* acted that they *cannot be restored to their original* condition" (118 U. S., 317), the Court "*will refuse to interfere*" at all unless relief can be given independently of the contract.

The same thing is essentially true of the railway contracts claimed to have been assigned. The contracts represented merely the *right to make the earnings on the railway companies' lines.* Being for fixed periods, day by day they diminished and became exhausted, and all had expired by December 30, 1882 (Rec., p. 1144). The transfer, exhaustion and expiration of these contracts constitute a transaction as effectually executed, and as clearly within the principle applied, as any other conceivable act or transaction between the parties.

Ninth.

In holding the lease executed up to 1885 *by the acts of the parties the Court erred in not holding the rental reserved and paid to have been an agreed and conclusive valuation by the parties, not merely of the* USE *of all* PROPERTY *for that period, but* ALSO *of the unlawful covenant of the lessor not to exercise its franchises; and the Court erred, therefore, in not holding that a part only of the rental paid should represent and offset the earnings under the lease, and that "the chief consideration for the sums paid" was the cross-complainant's covenant to abandon its business, and that the "chief" portion of the sums paid as rental should accordingly be otherwise applied to the credit of the cross-defendant.*

In ascertaining value, estimates made by the parties themselves where these were *agreed* upon and appear, ought to be conclusive. It is obvious here that the parties agreed upon the rental reserved as the fair representative of the value of the *net* earnings to be made by the use of the resources of the Central Company transferred for that purpose, together *with the other elements for which the cross-defendant was to make compensation.*

If the *lease* is to stand as *executed* up to 1885 by the *acts of the parties* in the matter of offsetting earnings and rental only, it follows that only a part of the amount paid as rental was by the acts of the parties applicable to offset *net* earnings. By estimate and *agreement* of the parties, as well as by the construction of this Court, the "chief" part of the rental paid was paid on account of the consideration represented by the cross-complainant's covenant to abandon its business. The decision of this Court *overruled* the *express contention upon that subject of the counsel* for the Central Company in argument

(139 U. S., 37); yet that contention has become the present contention of the Court below. This rental cannot *be retained* and *given* to the cross-complainant *in gross* under another form and under *color of paying net earnings* arbitrarily assumed by the Court to have been sufficient to absorb the whole amount paid by the cross defendant. Only a *part* in any case can be lawfully applied upon earnings. Consideration should in some degree have been given to the judgment of the Supreme Court, which had construed the lease and held that the rental paid was only *partly* for the *use of property;* and it was *error* not to apply the "*chief*" part of the amount paid as rental as a credit upon whatever amount the cross-defendant should otherwise be adjudged to pay.

Tenth.

The Court erred in its decree by adopting the valuation of property made by the Master as of 1870, *based on market value of the total capital stock as the measure of value of the Central Company's property in the hands of the cross-defendant in* 1885, *without any reference to a Master to make the inquiry, or other opportunity given the cross-defendant to show the actual value of said property or the actual market value of said capital stock in* 1885.

The considerations which have already been submitted establish that there should have been no decree for the appraised value in 1885 (when it is incorrectly assumed that the lease had been disaffirmed), of any property, tangible or intangible, which had ceased to exist without fault of the cross-defendant or been consumed and used up in the conduct of the business. There could lawfully be, in such case, no

decree except for the payment for or return of what property had not been so expended in making the earnings. That is the only result consistent with the theory of the Court upon which earnings are given by the decree to the cross-complainant.

If the valuation in 1870 is adopted as a basis of responsibility and of the decree, it is inevitable that that valuation should be reduced by the amount it included for contracts and patents expired, for contract lines of railway which, like the Baltimore and Ohio system, had withdrawn altogether on the expiration of their contracts, and by allowance for the exhaustion and depreciation of tangible property. This leads to the same result, simply the mere return of all property remaining on hand not consumed in the course of the business. Arriving at this logical result from every starting point proves that it is the only one consistent with the hypothesis upon which the decree is founded.

For another and conspicuous reason the valuation made of property of the Central Company in 1870 could not be a proper measure of the value of what remained of that company's property in 1885, assuming the constituent elements of the property to have been such as were designated by the Court. In 1885 the contracts with the railways making up the great Baltimore and Ohio system had long before expired, and for a number of years the Baltimore and Ohio system of roads had ceased to be operated by the Pullman Company either under contracts originally assigned by the Central Company or under any others which, by substitution or otherwise, may be held to have succeeded to them. It requires no argument to indicate that the contracts embracing that great system, therefore, had a value in 1870, under the rulings of the Court below, which had altogether ceased to exist in 1885, and a value too great to be disregarded in the estimate of value.

Moreover, in January, 1885, the contract expired which the Pennsylvania Railway had made with the Pullman Company in 1870. That contract the Cen-

tral Company claimed had been made in part at least in exhange and substitution for some of its original contracts assigned to the Pullman Company. The Pennsylvania Railway refused to renew this contract. Subsequently a new contract of far less value was made between that Railway Company and the Pullman Company under the circumstances detailed in this original bill, and by agreement it was made to relate back and cover the period following the expiration of the former con tract. But for a considerable period there was no contract between those parties. When that Pennsylvania contract expired the last of the Central Company's contracts was gone. If there was an exception it was too insignificant to be considered; and the statement of the opinion below that the value of the property in 1870 should be taken as its value in 1885; that "*presumably the value increased;* the *evidence* fully justifies the presumption" is enough to overwhelm with astonishment any one who knows anything of the evidence and of the record.

It is plain, therefore, that all these elements, namely, the depreciation of the physical property, the expiration of the patent rights, and the expiration of the contracts should be applied to reduce, by their *total*, the valuation in 1885 from the valuation made in 1870, which included them. The valuation made in 1870 was no lawful measure of the responsibility of the cross-defendant in 1885.

Manifestly, therefore, opportunity should have been given the Appellant to show the value of the "property" in January, 1885. We should otherwise have been advised by some intimation when before the Master that it was really the value in 1885 which he was to ascertain. When the Court instructed the Master that the "measure of compensation" was "*clearly* the value of the property *when received*" we did not know, nor did the Master, that he *then meant* by that the value *when* the property should have *been returned* in 1885, upon disaffirmance of the lease; nor did we understand

that he had directed the value of the property *when received* in 1870 to be ascertained, solely because it would have been difficult for the Transportation Company to ascertain the value in 1885 except by reference to that value in 1870. With all due respect we submit we were not gravely in fault for not gathering this intent of the Court from the indications given. It was error in the Court to thus change its position abruptly without further reference to the Master or giving other opportunity to show the changes in the "property," and in its condition and value, and, if material, to show the market value of Central Transportation Company's stock on January 1, 1885.

It was error also for the Court to assume arbitrarily a matter, disproved in the evidence, that the 1st of January, 1885, was a date on which the lease was disaffirmed by the Pullman Company, and consequently *the* date on which the "property" should have been returned. He had himself entered judgment for installments of rent accruing in 1885, in cases tried by himself in June, 1886, in which the validity of the lease was not questioned (139 U. S., 64). The original bill in the case he was deciding asked aid in affirmance of the lease, and was not filed until January 25, 1887. The suit in which the lease was disaffirmed was tried before him, and was not *begun* till September 21, 1886. January, 1885, had no significance except as the date when it was assumed the payments ceased of rental proposed to be set against earnings received and wiped out at that date as executed transactions. This was error, for at least it made a difference of about two years' interest on about two and a quarter millions of dollars in favor of the cross-complainant.

Eleventh.

The Court erred in confirming the finding of the Master that certain railway contracts belonging to the Central Company, originally made to continue "during the continuance of the incorporation" of that company, were continued in force and extended for ninety-nine years by force of an act of the Legislature of the State of Pennsylvania, of the 9th of February, A. D. 1870, *by which said Central Company was given a corporate life for another period from the expiration of its then existing charter; and the Court erred in not upholding the claim of the cross-defendant that such effect of said legislative act was in conflict with and forbidden by Article I., Section* 10 *of the Constitution of the United States, which prohibits on the part of the States any enactment impairing the obligation of contracts.*

The Central Company was incorporated under the Act of the 7th of April, 1849, a general law for the incorporation of manufacturing companies, and its corporate life was limited to twenty years by that charter, which term expired on December 30, 1882. The railway contracts were made while the terms of that charter, and of no other, were in force. Afterwards, on the 9th of February, 1870, the Central Company procured a special act of the Legislature of Pennsylvania by which the Central Transportation Company *eo nomine* was given a corporate life for a period of ninety-nine years from the time of the expiration of its then existing charter under the general law. It is claimed by the Central Company that this special *legislative act operated to extend* for the same period of time *the existing railway contracts* which had been made to run "during the continuance of the incorporation" of the Central Company, and the Master so found (*Rec.*, p. 1170), and

his conclusion upon that subject the Court has confirmed and adopted, expressly overruling an exception of the cross-defendant on that ground (*Rec.*, p. 1191). The *conclusion* is that such was the legal *effect and operation of the Act of* 1870, and that, moreover, the legislative authority finds confirmation for that in the provision of the Act of 7th of April, 1849, the general law above mentioned, which reserved power to the Legislature to alter or amend that statute. These conclusions are contested by the cross defendant for several reasons:

First.—The special Act of 1870 in no wise purports to be an amendment of the General Law of 1849. An amendment of that statute would apply to and affect the law throughout its entire operation, and, if it applied to corporations existing at the time of the amendment, would apply to all such corporations alike. The Act of 1870, however, was a special act limited by its express terms to the Central Transportation Company, conferring upon it new powers and giving it new and independent term of corporate life for a future period of ninety-nine years. Under that act, that company acquired for the first time corporate right to conduct the ordinary sleeping-car business. It will not be pretended that, as an amendment to the general law, the special powers given by the Act of 1870 to the Central Transportation Company were conferred upon and enured to all the corporations existing under authority of the Act of 1849. Until the Act of 1870 was passed, the Central Transportation Company was incorporated as a manufacturing company merely, under the provisions of the Law of 1849. The mere recital in its articles of association of its purpose to carry on a business of railway transportation could not originate a power not included in the terms of the statute (*People ex rel.* v. *Chicago Gas Trust Co.*, 130 Ill., 286). In argument in the Court below and in the Supreme Court, 139 U. S., , it was strenuously contended on behalf of that

company that it was merely a private manufacturing company, and was charged with no public duties which were violated by the lease of the Central Transportation Company; and, apart from the Act of 1870, that was perhaps true. But the Act of 1870 was held to have conferred upon that company the corporate power to conduct the public business of transportation, and to have confirmed the power which it had been assuming without legal authority to exercise, and charged it with the corresponding burden of public duties; but certainly it will not be contended that, as an amendment to the general law, it fastened that power and charged those duties upon all the corporations incorporating under the Act of 1849.

SECOND.—The Act of 1870 was procured by the Central Transportation Company, and it is denied that the Legislature of Pennsylvania had power, *without the consent of the several railway companies*, to arbitrarily extend the term of the contracts which they had made with the Central Company. If the Act of 1870 is construed to have that legal effect, then we insist that the act so construed is itself void, as being in conflict with that provision of the Constitution of the United States which inhibits on the part of the States any enactment impairing the obligation of contracts. (Cons. U. S., Art. 1, Sec. 10, Cl. 1). A corporate charter is a contract with the State. The term of corporate life is a part of such a contract. The charter is a contract for precisely what is affirmatively granted and no more. The Central Transportation Company was given a corporate life for twenty years. At the time its railway contracts were made it was entitled to that term of corporate life; and it had no shadow of right to more. That grant of corporate prerogative was a contract with the State, and the railway agreements were *independent* contracts between the parties to them, *founded on that with the State and limited by its limitation.* Any

grant of additional corporate life must be the result of a *new contract between* the State and the Central Company, by which the existing contracts with the railways could not be affected without a new agreement to that effect with them. Laws existing at the time of the making of a contract enter into the contract as a part of it; and laws impairing its obligation are unconstitutional, or *they cannot be applied to* the contract previously existing (*McCracken* v. *Hayward*, 2 How, 612; *Ogden* v. *Saunders*, 12 Wheat, 256).

The effect of the Act is to extend those otherwise expired contracts over the whole period of fifteen years, and thereby to support by them the claim to all the earnings during that entire period. The contracts thus extended *enter* also as *contracts of that duration into the valuation of property* said to have been transferred in 1870. Neither that valuation nor the result as to earnings could be supported without the alleged operation of the legislative Act of 1870 in extending the duration of the existing contracts.

Twelfth.

The Court erred in holding the cross-defendant to have been derelict in that it had refused or neglected to produce to the Master in evidence all earnings called for by order of reference; and in holding that the cross-defendant had failed or refused to disclose earnings called for by the Master under authority of said order of reference; and in assuming arbitrarily that the burden of proof was upon the cross-defendant to show that the earnings were less than the rental paid; that the parties to the lease intended that the use and rent should balance each other, and that in the absence of proof to the contrary, it should be presumed they did.

On this proposition that the cross-defendant was thus derelict the Court below declined to amplify or explain its order of reference on the points upon which differences had arisen before the Master, but confirmed the report of the Master as to what constituted the property transferred in 1870, and his method of valuation of it. The Court arbitrarliy assumed that the value then sufficiently indicated the value fifteen years later, in 1885, when the property had almost entirely passed out of existence; asserted,—without evidence, and in the face of the Master's report that without more evidence than had been adduced upon the order of the Court as it stood it was impossible to ascertain the actual earnings, and that "it would be idle to speculate upon the result of such testimony when adduced,"—that the earnings during fifteen years from the use of cross-complainant's property had been at least equal to the total amount of money paid under the lease upon any consideration whatever; that if not so the burden of proof lay on the cross-defendant who should have shown it; and by this process arrived at the present decree.

We deny that the cross-defendant has been thus derelict. We deny that in a suit like this, for the recovery of property and damages, the *burden of proof of value can be imposed* upon the cross-defendant; and we deny that the claim of cross-complainant is to be upheld *except so far as it is affirmatively disproved* by the cross-defendant. We deny that it has failed to comply with and to conform in all respects to the order of the Court as made, and insist that the suggestions to that effect are entirely unfounded and are therefore quite inadequate to give the needed plausible complexion to the reasonings which are adduced by the Judge below to sustain the action of the Court or its decree.

The facts which are shown connected with this subject by the Record and the Master's report support this contention.

It appears in the Record, at page 867, that the

counsel for the Central Company had addressed a letter to the Master requesting the production of certain papers, which letter was transmitted to the Pullman Company; but the Master has not incorporated it in his report, nor has it ever been made, at any place, a part of the Record. All that the Record shows on the subject is as follows:

At page 867, upon attention being called to the request by counsel, we stated that we regarded it as an extension of the order of the Court in a material degree, and would for the present decline to furnish the statements demanded until the order of the Court should be made sufficiently specific to call for them. We had already furnished to the Master (p. 866) all the earnings of Central Company cars, wherever made, insisting that the order of the Court, properly construed, called for nothing more.

At page 872 counsel called upon us to produce the analytical statement books kept after August 1, 1874, and we declined to do so, for the reason above given. Counsel at the same time asked for a statement of the earnings and expenses of the Central Transportation division of the Pullman Company, from January 1, 1870, to April 1, 1872, which we presented the next day, at page 895.

At page 879 our accountant, under the Master's ruling, made answer to a question to which we objected for the reason stated above. At page 881 we entered a general objection to the line of the cross-examination of our accountant, but did not restrain his replies.

At page 881 counsel again called upon us to produce the analytical statements of the Pullman Company for the ten years.

At page 882 counsel called upon us to produce a statement showing the gross and net earnings made by the Pullman Company after 1870 by the operation of cars under the sixteen contracts. We declined to do so, except upon the order of the Master, and then subject to objection for the reason above given. The Master made no order, but the next day, without any further call or any order, we, at

page 883, produced the analytical statements called for by the Master's letter and by counsel at pages 867, 872 and 881, we expressly stating that they were produced in compliance with the call of counsel and the request of the Master; and their production was tacitly accepted by both the Master and counsel as such compliance.

We then produced, at page 895, the two statements called for at pages 872 and 882, one of them being a statement showing the result of the operation of sleeping cars over the territory covered by the sixteen contracts from January 1, 1870, to the expiration date of each contract. We expressly stated this to be in compliance with the call of counsel of the day before (at pp. 872 and 881), and it was not suggested that it was not a compliance; and we supposed the call to be the same as the first of the two calls in the Master's letter, and that we had given all the statements asked for.

We are confirmed in this supposition by the fact that IN HIS REPORT the Master asked for additional statements, as necessary to complete his report. They were NOT *however, statements we were asked for at the hearing* before him. *All such were given him.* But they were statements which *would be pertinent only if* the conclusions reached by him after the hearing before him, and during his consideration of the case, and first announced in his report, were correct, namely, *first*, that the special act of the Legislature of Pennsylvania, extending the corporate life of the Central Transportation Company, had the effect of extending also the duration of contracts of that company with various railway companies which were limited to last during its corporate life, and were made at a time when its corporate life was limited by law to a certain date, namely, December 30, 1882, and, *second*, that the Pullman Company is bound to account for the earnings made on certain railways with which the Central Transportation Company had no contracts whatever.

Thus the report of the Master shows that these

were the only supplemental statements asked for by him. He did not ask for either of them *at the hearing;* and we insist that the holding of the Court, in its opinion and order made upon the Master's report, that we had been derelict and had refused to conform to the provisions of its order of reference, and had withheld evidence or information called for thereby, and that it was *consequently to be presumed against* the Pullman Company that the earnings made under the Central Transportation contracts by the use of its property were greater than the sums of money paid as rental to the cross complainant, or the Pullman Company would have shown it, was wholly without foundation and unjustifiable, and that the decree is erroneous which is based upon that assumption.

The Court arbitrarily assumed without inquiry, but in the face of abundant evidence to the contrary in the Record, that the value of the Transportation Company's property in 1870, as appraised under its order by the Master, was a proper measure of the value of what remained of that so-called property in 1885. No order of the Court had ever directed inquiry into that value or intimated the purpose of the Court in that direction. No opportunity was ever given the cross-defendant to show either the value of what remained of that property in 1885 or the market value of the stock of the Central Company at that date. Notwithstanding this, the Court, upon this wrong foundation, charged that the Pullman Company had been derelict in failing to conform to its order of reference, and said, concerning the value of the Central Company's property in 1885, as follows (Rec., p. 1196):

> " Presumably the value increased; the evidence fully justifies the presumption. *If it decreased, the Pullman Company could and should have shown it.* The Master's valuation in 1870 is, *therefore, to be taken* as the value in 1885, *when* the property *should have been returned.*"

We submit that the flagrant injustice and wrong involved in this language cannot be too strongly expressed. We did not refuse to conform to the order of the Court. The evidence and the Record do *not* show that the value of the property appraised in 1870 increased during the succeeding fifteen years. The Court never did direct or *suggest* an inquiry into the value of the property remaining in existence in 1885. The Record indicates that the idea never arose until after the coming in and the discussion of the Master's report. The assumed foundation of fact upon which this language of the Court is based *did not exist*, and we submit that the language and conclusion of the Court were wholly unjustified and that the error in the decree based thereon is flagrant.

Finally, if the cross-defendant is charged with the property when delivered in 1870, it should be charged only with interest upon a true valuation of it at that time, and credited with the sums of money which it has from time to time paid, with proper computations of interest.

If it is to be charged with earnings made before the lease was disaffirmed, then it should be holden only to surrender whatever property remained on hand at *that* time. That time *was not* the 1st of January, 1885, and there is error in the decree in that respect. It should not be charged with anything for the value of incorporeal rights, patents or contracts, nor for waste or depreciation of property; because any loss which has accrued has occurred with the concurrence, acquiescence and fault of the cross-complainant, and also because all these contracts or patents, or other incorporeal rights, were consumed in making the earnings.

By the *hypothesis* upon which the Court proceeds in giving the earnings of the business to the cross-complainant, the cross-defendant *held* the property and *applied* it for the *use* of the cross-complainant, and it should bear the loss inherent in the operation of the service precisely as if it had conducted the business personally or by ordinary agents.

If the cross-defendant is holden to account in 1885 for the value of all the property which the Central Company had in 1870, and its value in 1870 is made the measure of value in 1885, the amount of that valuation should be reduced by the amount of what it may have included on account of the contracts and patents which expired in the course of the business, and by the amount of all the waste and depreciation of tangible property which occurred.

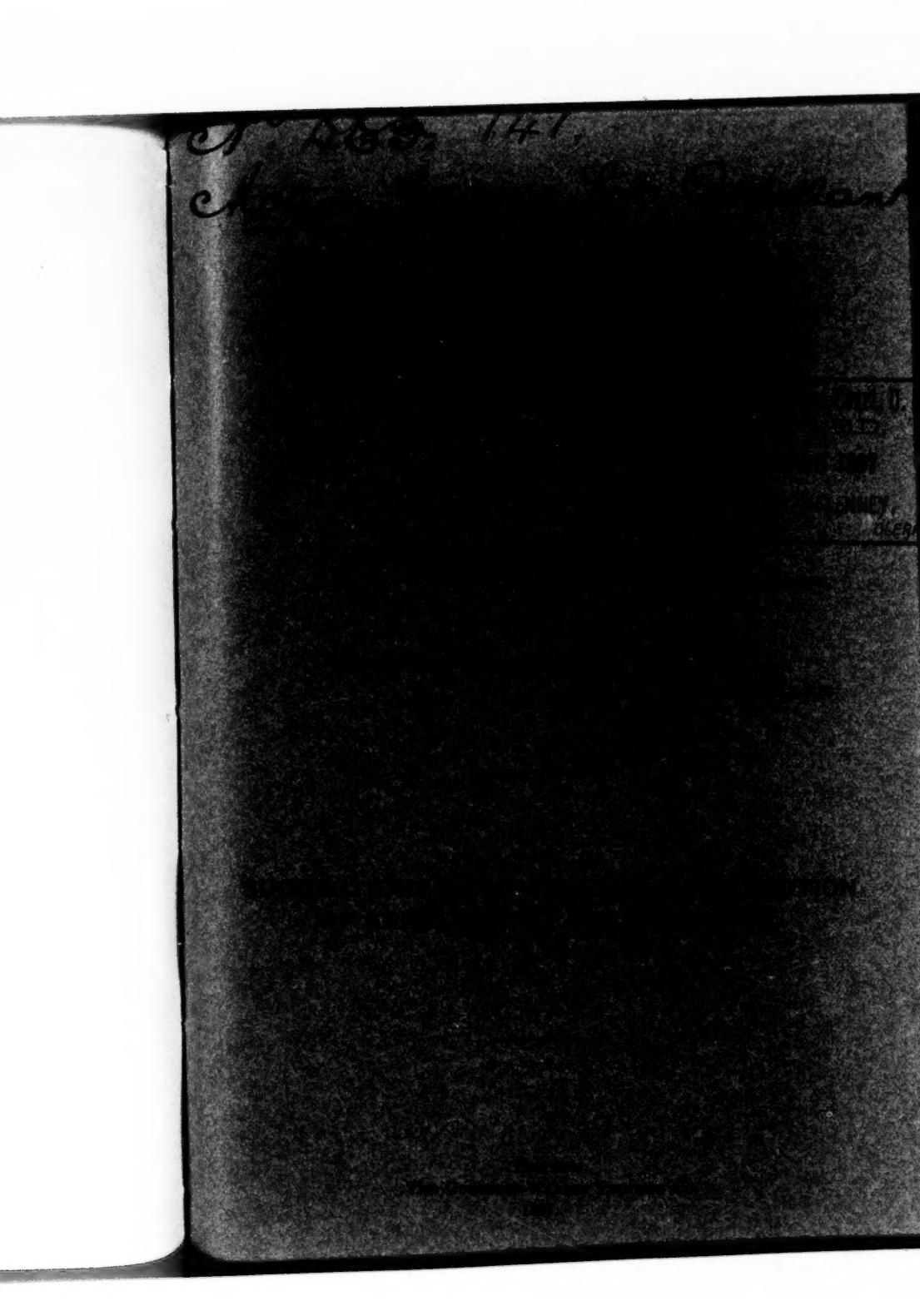
But we insist that the cross-defendant is not amenable to the demands of the cross-bill. The contract of lease and the acts of the cross-complainant created a situation in which, under their settled rules, the courts of the United States refuse to interfere, but leave parties where they have placed themselves. They decline to interfere for either party when contracts are void because of vicious or immoral covenants or considerations; and *covenants are of that class* which are void for restraint of trade or other flagrant violation of public policy.

The rules which have been applied below in the present case are not supported, nor can be vindicated either by facts from the Record or by any recognized legal principle; and the result is equally without justice and without precedent.

Finally we urge with respect that the decree below ought to be reversed, and the cross-bill and the original bill dismissed. But if upon any ground we are responsible in any degree to the appellee another reference should be ordered to the Master to ascertain the measure of that responsibility under instructions to be indicated by this Court.

EDWARD S. ISHAM,
Of Counsel for Appellant.

A. H. WINTERSTEEN,
EDWARD S. ISHAM,
JOSEPH H. CHOATE,
Of Counsel for Appellant.



In the Supreme Court of the United States.

Pullman's Palace Car Company, Appellant,	October Term, 1896.
vs.	No. 463.
Central Transportation Company, Appellee.	Record, No. 16,212.

SUGGESTIONS ON BEHALF OF APPELLANT.

In respect of this motion, the appellant submits the whole matter to the convenience and pleasure of the court. It interposes no objection to the action of the court sought by the petition filed in support of the motion; but it strenuously objects to the aspect in which the subject is presented and to the point of view from which the court is invited to survey it.

The petition represents that there are *special and peculiar* circumstances which constitute grounds of the motion, and that these are: "That the bill was filed in this case by the present appellant on the 15th day of April, 1887; * * * that the proceedings in *this* case have, without the fault of the appellee, been greatly protracted;

* * * so that it is now nearly ten years, since the commencement of the proceedings," etc.

We recall to the consideration of the court that while the original bill, which was filed as stated on the 15th of April, 1887, was pending, every detail of its subject-matter was completely disposed of by the judgment of this court in *Central Trans. Co.* v. *Pullman's Pal. Car Co.*, on the 2d day of March, 1891. (139 U. S., 24.) There remained then no question which could be litigated under that bill between the parties, and no subject upon which complainant sought relief.

Accordingly, in April, 1891, *six years ago*, the complainant moved for the dismissal, at its own cost, of the original bill; and the litigation which it instituted should have ended then. The appellee contested the dismissal of the bill, and procured it to be retained against the will of the complainant. It was retained for the purpose of giving support in *that* forum to a co-called cross-cause instituted by appellee. Nothing has been done since that time *except under that cross-bill* of the appellee. The appellant prosecuting no claim, seeking no relief for the last six years, except to get out of that forum in which it had filed its bill, and to terminate its suit according to the judgment of this court, disclaims the reproach ingeniously wrought into the subtle statement that *this* case was begun by the appellant in 1887; that it has been "*without fault of the appellee* greatly protracted"; "so that it is now nearly ten years since the commencement of the proceedings," etc. This proceeding is distinctively a suit begun by the appellee after the above-mentioned judgment of this court was rendered in 1891, and is founded on conditions that had their origin only under that judgment. This suit we have defended, as it was our proper right

and, as we conceive, our moral duty to do. With this rectification of the attitude of the respective parties we submit the matter as we have above stated to such action upon the motion as the court may approve.

EDWARD S. ISHAM,
Of Counsel for Appellant.

A. H. WINTERSTEEN,
ROBT. T. LINCOLN,
EDWARD S. ISHAM,
JOSEPH H. CHOATE,
Of Counsel for Appellant.

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1896. No. 463.

Pullman's Palace Car Company, Appellant,

vs.

Central Transportation Company, Appellee.

MOTION TO DISMISS APPEAL AND BRIEF IN SUPPORT THEREOF.

MOTION.

The Central Transportation Company, appellee in the above case, moves this Honorable Court to dismiss the appeal on the ground that the record discloses no questions which would give this court jurisdiction to entertain an appeal under the Act of March 3d, 1891.

CONCISE STATEMENT OF THE CASE.

The following report of the case in 72 Federal Reporter, 211, is reprinted in full as containing a concise statement of the facts, arguments and opinions.

CIRCUIT COURT, EASTERN DISTRICT PENNSYLVANIA.

Pullman's Palace Car Company

vs.

Central Transportation Company.

Central Transportation Company

vs.

Pullman's Palace Car Company.

January 14th, 1896.

1. ULTRA VIRES LEASE—RESTITUTION—LOSS OF IDENTITY OF PROPERTY—MEASURE OF COMPENSATION.

A sleeping-car company, operating a system of lines, leased the cars, contracts, &c., of another company, operating another system, and thereupon so merged and absorbed the plants of both companies into an entire system, by substitution of cars and of new contracts in its own name, that the identity of the plant of the lessor company was destroyed, and the plant itself could not be returned. After fifteen years' possession the lessee company, without returning the property, repudiated the lease on the ground that it was *ultra vires* and void, and successfully defended on that ground against a suit for rental. In a proceeding in equity to compel the lessee company to make compensation for the property so appropriated, *held*, that the lessee company must pay the value of the property leased, as a whole, including contracts, and not merely the value of the tangible property, such as cars and equipments.

2. SAME.

Held, further, that a valuation at a sum not above the selling price of the stock of the lessor company was not excessive.

3. SAME. RENTALS AND EARNINGS—PRESUMPTIONS.

Held, further, that as the lessee company had failed to furnish the information necessary to ascertain whether the earnings before the repudiation of the lease had been greater or less than the rental paid, the presumption was that the rent and earnings balanced each other, and that as the evidence justified the presumption that up to the time of repudiation the property had increased, rather than decreased, in value, a decree should be entered for the value found by the Master, with interest from the time of repudiation.

HEARING ON EXCEPTIONS TO REPORT OF MASTER.

This was a bill in equity by Pullman's Palace Car Company against the Central Transportation Company, and a cross bill by the Central Transportation Company against Pullman's Palace Car Company. The two companies, plaintiff and defendant, had been sleeping-car companies, of about the same size, but occupying different territories; the Central Transportation Company operating a system of lines from St. Louis east to the Atlantic, and Pullman's Palace Car Company operating a system of lines from Buffalo west to the Pacific. Negotiations entered into for consolidation resulted in a lease of the Central Transportation Company by Pullman's Palace Car Company for ninety-nine years, under a Pennsylvania statute specifically drawn by counsel for that purpose and passed by the legislature. After the lease had been in operation fifteen years, and after the Central Transportation Company's property had been so absorbed into the Pullman system that identification and separation had become impossible, the two companies quarreled over a clause of the lease. The Central Transportation Company brought suit at law to recover accruing installments of rent, and Pullman's Palace Car Company filed the present bill, alleging that the lease had been terminated by it under a clause reserving that right, and that in any event it was originally invalid; alleging further that it was impossible to return the property, and asking the court to enjoin the suits at law, and ascertain what would be an equitable compensation for the property. The court granted an injunction against suits at law for further rental, but refused to interfere with pending suits for rental previously accrued. Pullman's Palace Car Company thereupon set up as a defense to one of these pending suits at law the claim already made in the bill in equity, viz., that the lease itself was invalid. This defense the court sustained, and its decision was affirmed on appeal. Central Transp. Co. vs. Pullman's Palace Car Co., 139 U. S., 24; 11 Sup. Ct., 478. Thereupon Pullman's Palace Car Company asked leave to dismiss the present bill, in which it had asked the court to fix

the compensation to be paid for the property in lieu of its return; and the Central Transportation Company opposed this motion, and asked leave to file a cross bill praying for compensation for the property taken. The motion to dismiss was refused, and leave was granted to file the cross bill. Pullman's Palace Car Co. vs. Central Transp. Co., 49 Fed., 261. Issue being joined, testimony was taken, and the cause heard on bill, answer and proofs, with the result that a decree was entered in favor of the Central Transportation Company, and the cause referred to Theodore M. Etting, as Master, to ascertain the value of the property. Pullman's Palace Car Co. vs. Central Transp. Co., 65 Fed., 158.

The Master reported that the Central Transportation Company was incorporated December 30th, 1862, for twenty years, originally with a capital of $200,000, which from time to time had been increased until it reached $2,000,000 prior to the time of the lease, and which was still further increased at the time of the lease by the issue of $200,000 of stock for the purchase of patents, making a total capital of $2,200,000, and that it had a net earning capacity of nine and one-half per cent. per annum, increased to about eleven and one-half per cent. per annum by the purchase of patents hereinafter mentioned, on which the company had been paying nearly $50,000 per annum royalty, and that it had a business which indicated a healthy growth. Its earnings were made by operating lines of sleeping cars extending from New York, Philadelphia, Baltimore and Washington to Chicago and St. Louis. There were sixteen written contracts with different railroads, covering the operation of most of these lines, but not all of them, as a few lines were operated without any written contract with the railroads over which they extended. Pullman's Palace Car Company had been incorporated in 1867 with a capital of $1,250,000, subsequently increased to $1,750,000, and with net receipts equal to thirteen per cent. per annum. It operated lines under contracts with railroads mostly north and west of Chicago, and extending to the Pacific coast; but it had no means of reaching Philadelphia, Baltimore or Washington from the West, and its only means of reaching New York was by the Grand Trunk and Michigan Central Railroad to

Buffalo and the Delaware, Lackawanna and Western Railroad to New York. Its cars were superior in comfort and safety to those of the Central Transportation Company, and this fact affected travel on the lines of the latter company, especially those over the Pennsylvania Railroad and its affiliated companies. In addition to this, the entire condition of sleeping-car transportation at that time was unsatisfactory. Passengers were obliged to change cars at points where the two systems came in contact with each other. The Pennsylvania Railroad and the roads forming its system could not make contracts with Pullman's Palace Car Company because of the existing contracts with the Central Transportation Company. There was pending litigation between the two companies, the Central Transportation Company claiming that the Pullman Company had infringed its patents. Under these conditions it appeared to be desirable, in the interests of both the sleeping-car companies, the railroads and the public that a consolidation of the two companies should be effected. Negotiations resulted in: (1) A purchase by the Central Transportation Company of all the patents under which it had been operating at a royalty. To enable this purchase to be made the capital was increased from $2,000,000 to $2,220,000. (2) A lease by the Central Transportation Company to the Pullman Company for ninety-nine years, at a rental of twelve per cent. per annum on $2,220,000, and an assignment by the Central Transportation Company to the Pullman Company of all the former's cars, contracts and patents. (3) A contract between the Pullman Company and the Pennsylvania Railroad Company whereby the various contracts under which the Central Transportation Company had been operating lines over the roads comprising the Pennsylvania system were exchanged for a single fifteen-year contract in the name of the Pullman Company. This contract allowed the equipment to be made up in part of the old Central Transportation Company cars and in part of new cars to be furnished by the Pullman Company, the railroad undertaking to place the old cars in first-class condition.

To obtain legislative authority for the lease by one sleeping-car company to the other, the counsel for the Pennsylvania

Railroad Company prepared a statute, which was passed by the Pennsylvania Legislature, intended to authorize the lease, extend the corporate existence of the Central Transportation Company for ninety-nine years and authorize the issue of $200,000 of new stock. The effect of these agreements, as stated by the Master, was: "The Pennsylvania Railroad "obtained forthwith, for its entire system, Pullman cars and "Pullman connections; agreeing, however, to accept, as a "part of its new equipment, old cars of the Central Transpor- "tation Company, which were to be put in first-class condi- "tion. The Central Transportation Company was thus saved "from an expenditure necessary to provide a proper equip- "ment of cars and better service, which, under other circum- "stances, would have been unavoidable, and received at once "a sum exceeding its then earning power by about one-half of "one per cent., and which payment, it was anticipated, it "would continue to receive. An harmonious system of sleep- "ing-car transportation was thereby established, extending "from the Atlantic to the Pacific, the receipts of which, it was "believed, would be sufficiently large to secure the continu- "ous payment of the above rental, and also to insure greater "prospective value to the Central Transportation Company's "shares. The Pullman Company acquired an entrance to the "principal cities of the Atlantic seaboard by favored routes. "It at once took the place of the Central Transportation "Company on the Pennsylvania lines, so called, for fifteen "years, and also on the lines of all other railroad companies "covered by the assigned contracts of the Central Transpor- "tation Company; and there was thus established reciprocal "relations, which have, for the most part, since continued. It "attained an ascendency in the sleeping-car business which "has never since been disputed, as well as a monopoly of a "most valuable territory for fifteen years."

The Master further reported that in all of the sixteen contracts between the various railroads and the Central Transportation Company the railroads were to furnish fuel and light, and keep the cars in good order and condition, and in some of them the railroads undertook to renew worn-out parts. Some of the contracts expired at definite dates, others ran for

the life of the patents previously taken out. Six of them ran "during the continuance of the incorporation of" the Central Transportation Company. The Master held that this included the continued corporate existence under the statute subsequently passed, extending the corporate life of the Central Transportation Company beyond the original limit of its charter. After the execution of the lease to the Pullman Company, some of the contracts were replaced by new ones taken in the name of the Pullman Company, and some were canceled. The Master further reported that at the time of the lease the rolling stock of the Central Transportation Company consisted of about one hundred and nineteen cars and their equipments, of which the total cost was about $950,000, and the value at the time of the lease about $712,000, and that the Pullman Company had actually received from various railroads, in settlement of cars retired or destroyed, $556,-933.61, and had on hand thirty-three cars. The Master reported, however, that, on account of the peculiar nature of the contracts, it was, in his judgment, impossible to correctly value the cars, apart from the obligations to maintain and use them set forth in the contracts. The Master further reported that the value of the patents was $266,000—that being the price paid for them at the time of the lease. He further reported that it was impossible to make a separate appraisal or valuation of the contracts, owing to their peculiar nature and varying terms of duration. The Master then proceeded to report the value of the property taken as a whole. He found that there were three measures of value, which served to check or verify each other, viz.: (1) The testimony of a witness who knew the property well, who was competent to appraise it, and who estimated it to be worth at least $3,300,000. (2) The market value of the stock of the company at the time of the lease, which was between $2,464,000 and $2,640,-000. (3) The earning capacity of the property taken in connection with the probable amount to be put aside to restore the capital on a fair expectancy of probable life, and this value the Master estimated as at least fifty dollars per share. The Master then reported as follows: "The several forms of "valuation above considered may be summed up as follows:

"If Torrey's valuation is to be adopted, the capital stock of "the company was worth about seventy-five dollars a share. "If the public estimate is to be adopted, the stock was worth "from fifty-six dollars to sixty dollars a share. If the esti- "mate predicated on earnings, coupled with probable life, is "to be adopted, the stock was worth at least fifty dollars a "share. The two latter estimates serve to verify each other, "and to indicate that Torrey's testimony is excessive. They "are both so far below the capitalized value of the rental "agreed to be paid by the Pullman Company that either of "them, if accepted, would leave a large margin for the illegal "consideration which the court has directed shall be excluded "from the account. Which of the two is to be preferred? "And, if the price of the stock on the street is to be accepted "as the measure of value of the property when transferred, "what figure is to be adopted? The estimate of probable life "is hypothetical. The value of the stock on the street is a "positive indication of the estimate placed on the property by "the public. That it is not entirely a satisfactory measure of "value must be conceded, but in the judgment of the Master, "supported as it is by the best independent estimate that the "evidence affords, it should be accepted as the fairest criterion "of value. This amount has, according to the testimony, been "placed at from fifty-six dollars to sixty dollars a share; and, "whilst the evidence as to these values is not as satisfactory as "the Master would wish, it is nevertheless uncontradicted. As "between the two quotations above named, which indicate "the fluctuations of the stock in value, the Master has taken "the average, or, in other words, a valuation of fifty-eight "dollars a share. This, he believes, is as fair and equitable a "valuation as is possible, under the testimony; and he ac- "cordingly reports the value of the property, when received, "is by him appraised at fifty-eight dollars a share, or $2,552,- "000." With regard to the earnings of the property after it had been delivered under the lease, the Master reported: "An "accurate ascertainment of the earnings, without further evi- "dence than that which has been produced before the Master, "is impossible. The plant, upon the execution of the lease, "became absorbed in a system in which the elements of new

"contracts, additional cars and added lines entered so largely "that, from the evidence presented, it is not possible to dis- "tinguish accurately the earnings applicable to the property "assigned. General results, therefore, can only be ascer- "tained." The Master then proceeded to discuss the contentions of the respective parties as to the earnings, under certain statements which had been produced, and held that neither estimate was satisfactory or complete. He then reported as follows: "The Pullman Company has failed, though requested "by the Master, to furnish him with such information, which "would, he believed, have enabled him to state an account. In "so doing it has doubtless conformed to what its counsel have "advised as the true interpretation of the order of reference, "but the testimony furnished has not been sufficient to make it "possible for the Master to comply with the directions of the "court, as they are understood by him; and he accordingly is "compelled to report that he has not as yet been furnished "with sufficient data to enable him to ascertain the difference "between the rental paid to the Central Transportation Com- "pany from January 1st, 1870, to January 1st, 1885, and "the receipts derived by the Pullman Company from its use "of the property transferred during the period above re- "ferred to."

Both parties filed exceptions to this report. The Pullman Company prefaced its exceptions by a protest that the Central Transportation Company was not entitled to any recovery, and that the Pullman Company was protected by the Statute of Limitations. The exceptions, which were voluminous, covered substantially three objections, viz.: (1) That the Pullman Company was not accountable for the intangible property, such as contracts, &c.; (2) that the valuation was too high; (3) that the rents paid more than compensated for all the property received. There were numerous other exceptions to matters of detail, but the above comprehended the substantial objections. The exceptions of the Central Transportation Company were to the refusal of the Master to find that the property was worth at least $3,000,000, and his failure to report that the failure of the Pullman Company to furnish the information necessary to state an account of earnings entitled

the Central Transportation Company to a decree for the value of the property, without reference to the earnings. On the argument the Central Transportation Company, for the purpose of avoiding delay, offered to waive any claim for excess of earnings over the rental paid, and asked for a decree for the value of the property, with interest from the time when the Pullman Company repudiated the lease.

A. H. Wintersteen, Robert T. Lincoln and Edward S. Isham, for Pullman's Palace Car Company.

The contract under which the property was delivered having been adjudged void, the courts will leave the parties where they have placed themselves; and there can be, therefore, no recovery by the Central Transportation Company. The Pullman Company, if liable at all, was only liable for the property which was susceptible of manual transfer and physical delivery, to wit, the cars and equipments. The lease being void, so also was the assignment of contracts to the Pullman Company, and the Pullman Company therefore acquired nothing by the contracts. It was the duty of the Central Transportation Company to reassert its rights and take possession of the property, and its passivity and acquiescence in the situation were equally illegal with the lease itself. A party cannot recover for an injury which it was in his own power to prevent (Sedg. Dam., sections 201, 202; Loker vs. Damon, 17 Pick., 288; Dodd vs. Jones, 137 Mass., 323; U. S. vs. Smith, 94 U. S., 218), nor for an injury which it was its social duty to avoid (Miller vs. Mariners' Church, 7 Me., 51). And no fiduciary relation could arise out of the mere possession and use of the property. Root vs. Railway Co., 105 U. S., 215; Monk vs. Harper, 3 Edw. Ch., 111; Doyle vs. Murphy, 22 Ill., 508; Wilson vs. Kirby, 88 Ill., 572. The valuation of the Master is excessive, because it capitalizes the earning producing capacity of the plant, when the Central Transportation Company has received the earnings in the rental, and also because it includes the franchise of the corporation, which still exists. The legislature could not, by extending the corporate existence, extend a contract which would otherwise have expired at the end of the original incorporation.

Frank P. Prichard and John G. Johnson, for Central Transportation Company.

If the Master erred in his valuation, the error was in favor of the Pullman Company. A competent witness appraised the plant as worth at least $3,000,000. It was earning eight per cent. on this value, and with every prospect of increasing business. No witness was called by the Pullman Company to contradict this by any other appraisement of the plant as a whole. The Master cut down this appraisement to $2,552,000, the selling value of the stock. If this is to be changed it should, under the evidence, be raised, not lowered. The plant leased, consisting of cars, contracts, patents, &c., was absorbed by the Pullman Company into a new system, and its identity so destroyed by the establishment of new lines that it is impossible to separate or restore it, or even to identify its

earnings. The Pullman Company has refused to furnish the information necessary to state an account, but there is sufficient evidence to raise almost a conclusive presumption that, up to the time when the Pullman Company repudiated the lease, the earnings were far more than the rental paid. Under the circumstances, the Central Transportation Company ought not to be put to the delay of another accounting; and, if it is willing to waive any claim for excess of earnings, it is entitled to a decree for the value of the property which the Pullman Company has appropriated.

Before DALLAS, Circuit Judge, and BUTLER, District Judge.

BUTLER, D. J.

The Master was appointed in pursuance of the opinion filed December 18th, 1894, to ascertain the value of the property transferred and the amount of its earnings. He has found the value to be $2,552,000, and reports that no estimate of earnings can be made from the data furnished; that "the Pullman "Company failed to produce (though requested to do so) evi- "dence in its possession which he believes would have enabled "him to state an account." Although both parties filed exceptions the Transportation Company now seeks a decree for the $2,552,000, with interest from January 1st, 1885, when payment of rent ceased—waiving its claim to earnings to avoid (as it asserts) further delay in obtaining a settlement. The Pullman Company stands on its exceptions, claiming, in substance, first, that it is not accountable for the intangible property, such as contracts with railroads, patent rights, &c.; second, that the valuation is too high; and third, that the rents paid more than compensate for all the property received.

The matter embraced in the first exception is covered by the opinion under which the Master was appointed. It is not too late, however, to revive the question and continue the discussion; but we do not desire to add materially to what has been said. The argument drawn from the invalidity of the lease—that this instrument did not transfer this description of property—seems to be fallacious. The lease did not transfer any description of property. It was ineffectual for every purpose. The acts of the parties, however, transferred the property—the intangible as fully and effectually as all other. The counsel say no railway contracts valid "and obli- "gatory in favor of the Pullman Company, upon the railways, "during the original or the extended life of the Central Com- "pany, or during the continuance of any patent rights, original

"or extended, or for any other period whatever, were ever re-
"ceived by the Pullman Company. The Central Company
"had definite contract rights for fixed and long periods of
"time, and enforceable against the railway companies. The
"Pullman Company did not acquire those, and the Central
"Company did not 'part with' them. The Pullman Com-
"pany got nothing enforceable upon the railways, either
"specially or by damages. It acquired at best but a pre-
" carious *status*, terminable and destructible at any moment
"by the Central Company itself or by the State. The at-
"tempted assignments passed no title and no legal rights
"whatever."

This view was presented with force and earnestness. But the obvious answer is that the Pullman Company got the use and benefit of these contracts as completely as it did that of all other property named in the lease, operated its cars under them in some instances, in others surrendered them and obtained new contracts, in pursuance of the rights which they secured, and thus acquired complete possession of the Transportation Company's business, which it still holds and enjoys. It is of no consequence that the railroad companies *might* have refused recognition of the Pullman Company; they did not. Like the parties to the lease, they believed it to be valid, treated the Pullman Company as lawful owner of the contracts, and accorded to it all the rights they secured. To say that the Transportation Company might immediately have resumed possession of the contracts and continued the prosecution of its business, signifies nothing material to the circumstances. The same might as justly be said respecting the cars and other tangible property. It is not true, however, that the possession might have been so resumed. The Pullman Company would not have allowed it; and although the lease might have eventually been declared void, the property and business would have been absorbed in the meantime. Both parties firmly believed the lease to be valid; they were so instructed by eminent counsel, and were therefore justified in the belief. It was not until after the lapse of many years, when the property was irretrievably lost to the Transportation Company, that it had cause to doubt the validity of the lease.

It must not therefore be visited with knowledge of the invalidity, and the consequences of such knowledge, until the Pullman Company changed its position and raised the question. To hold otherwise would work manifest injustice, by allowing the latter company, after standing on the lease until it had absorbed the property and business, to turn about and say, We had no right to it; you should not have permitted us to take it, and you therefore have no right to complain.

As respects the second exception, we think the valuation is not unjust to the Pullman Company. The assertion that it includes the value of the Transportation Company's franchise is not well founded. It is true that the property is valued at its worth to the latter company, in view of the right to use it as the company did. This right the Pullman Company could exercise by virtue of its own franchise, and did not, therefore, need the Transportation Company's. The value of the property to the Transportation Company and to the Pullman Company was, therefore, what the former lost and the latter gained by the transfer. If the latter's gain was less than the former's loss, this might be, possibly, the proper measure of compensation. There is no evidence, however, that it was less; the indications are that it was not. If it was less the Pullman Company could have shown it. The Transportation Company's franchise was simply rendered valueless by the transfer of its property. Its business was thus lost and its power to establish another destroyed.

As respects the third exception, we think the inference that the earnings were equal to the rent paid is reasonable, if not unavoidable. If they were not, the Pullman Company, having possession of the evidence, could have shown it. The testimony produced by the Transportation Company was quite sufficient to put the burden on the other side. The failure to respond to the Master's request greatly strengthens the inference. It is urged, however, that if the Pullman Company is charged with the property as of 1870, it must be treated thereafter as entitled to the earnings, and be credited with the amount subsequently paid as rent. Of course, if it is treated as owner from that date, it could not justly be held accountable for earnings thereafter, and would be liable only for the

value, with interest from that date, subject to the credit stated. But it is not so treated, and cannot be, because it would not correspond with the facts and would be unjust. The ownership of the property remained in the Transportation Company, the Pullman Company taking possession and holding it for the former, paying a stipulated price for its use up to 1885. The lease under which the parties acted was void, but this did not render the parties' acts void. They chose to, and did, treat it as valid, and to the extent that its provisions were executed the court will not interfere, except to prevent manifest injustice. Up to 1885 they were executed; the Pullman Company got and enjoyed the use and paid the stipulated price. Inasmuch, however, as the enjoyment of the use was granted, and the rent was paid therefor, in contemplation of a longer continuance of the arrangement, it was supposed that the rent might fall short of a just compensation for the use, or be in excess of such compensation. This was, therefore, considered a proper subject of inquiry. It is plain, however, that the parties substantially intended that the use and the rent should balance each other; and, in the absence of proof to the contrary, it should be presumed they did. It was not, therefore, until 1885, when the Pullman Company ceased to pay rent, and repudiated the arrangement, that it became practically responsible for the return of the property, or the payment of its value. Of course, it may be said that such responsibility actually existed from the beginning because the arrangement was unlawful. The parties, however, did not so understand, and treated it as lawful; and to the extent of what they thus did in good faith their acts will not be disturbed. It is too late now to treat the responsibility as existing in 1870, and make settlement accordingly. It would not only be in conflict with the facts, but would work manifest and very great injustice. It would enable the Pullman Company to set up the Statute of Limitations, as it did before the Master; and, if this failed, then to take the property for less than it agreed to pay and did pay (interest considered), substantially as compensation for fifteen years of its use. It is the value of the property at the time it should have been returned that the Pullman Company should be charged with.

Inasmuch as this value would be difficult of ascertainment by the Transportation Company except by reference to the value in 1870, it was considered proper to direct the inquiry to the latter date. Presumably the value increased; the evidence fully justifies the presumption. If it decreased the Pullman Company could and should have shown it. The Master's valuation in 1870 is therefore to be taken as the value in 1885, when the property should have been returned. The payment of this sum, with interest from January 1st, 1885, seems necessary to a just settlement—treating the value of the use and the rents paid prior to that date as balancing each other.

A decree may be prepared accordingly, dismissing the exceptions and confirming the report.

DALLAS, C. J.

I concur in the foregoing opinion, and deem it unnecessary to further extend the discussion of the questions with which it deals; but may add that the result arrived at by the Master seems to me to be quite as favorable to the Pullman Company as, upon any possible view of the facts and the law, could reasonably have been reached.

ASSIGNMENT OF ERRORS FILED BY APPELLANT.

1. The court erred in denying the motion of the complainant in the original bill to dismiss the said bill.

2. The court erred in refusing to dismiss the original bill on the motion of the complainant therein.

3. The court erred in allowing the motion of defendant in the original bill for leave to file the cross bill in this cause.

4. The court erred in permitting the defendant in the original bill to file the cross bill which was filed in this cause.

5. The court erred in overruling the demurrers of the complainant in the original bill which were filed to said cross bill by said complainant.

6. The court erred in taking cognizance as a court of equity of the subject matter of said cross bill.

7. The court erred in holding that the subject matter of the said cross bill, being matter of a purely legal nature, and of the enforcement of a purely legal right, was not excluded from the cognizance of equity by the force of the seventh amendment to the Constitution of the United States.

8. The court erred in not holding that the subject matter of said cross bill was the proper subject matter of action at law only and of trial at law and by jury, both under the provisions of the seventh amendment of the Constitution of the United States and of section 723 of the Revised Statutes of the United States.

9. The court erred in rendering the opinion and in entering the order which was entered on the eighteenth day of December, 1894, in which the said cause was referred to the Master in Chancery, and in the directions to said Master and the other provisions contained in said order.

10. The court erred in holding in said order that under the circumstances stated in said cross bill the complainant therein was entitled either to any decree for the restoration of property delivered to the cross defendant in performance of the terms and for the purposes of the contract of lease dated the seventeenth day of February, 1870, and mentioned in said cross bill, and which is stated therein to have been illegal and void by the Supreme Court of the United States, or any affirmative intervention of the court whatever on behalf of the said cross complainant.

11. The court erred in holding that any property was ever transferred to or was ever received by the Pullman Company, the cross defendant, under the void lease of 1870 aforesaid, except such corporeal and tangible property as was susceptible of physical and manual delivery, and of an actual change of possession, even though such transfer and change of possession might be unauthorized or in violation of law.

12. The court erred in holding that the contracts of the Central Transportation Company with various railway companies mentioned in the pleadings in the original and cross cause, and the patent rights also mentioned therein and in the said opinion and order of the said court entered on the said eighteenth day of December, 1894, and in the said contract of lease, constituted " property " which was transferred to and received by said cross defendant under said void lease; and in holding that said cross defendant is bound to restore or pay the value of said contracts and patents.

13. The court erred in holding that by force of any assignment or assignments, under said lease or otherwise, that there was ever any transfer by the cross complainant to the cross defendant of any incorporeal and intangible rights created by contract or otherwise; and in holding that any transfer of such incorporeal rights or property could occur except by or in accordance with the operation of law; and in holding that any transfer of such rights or property made by or for the purpose of the void lease was made effectual by operation of law, so as to make the cross defendant lawfully responsible therefor, or holden to make compensation therefor.

14. The court erred in holding that a transfer of such incorporeal and intangible corporate rights could be made effectual by the act of the parties, although contrary to law, so as to enable the cross defendant to be clothed with said rights and the power to exercise them and dispose of them, and so as to make said cross defendant lawfully chargeable therewith under said cross bill and responsible therefor.

15. The court erred in holding that the contracts made subsequent to the making of said void lease, and which were made between the said cross defendant and the Pennsylvania Railroad Company, or other railroad companies, were made in exchange for, or in substitution for, the said railway contracts purporting to have been assigned to said cross defendant by the cross complainant by or for the purposes of said void lease, so as to give rise to any rights of the Central Transportation

Company therein, either by subrogation or derived in any other way, through assignments made for the purpose of said void lease, or by acts of the parties.

16. The court erred in holding that the Central Transportation Company transferred to the Pullman Company its property and business, including all the incorporeal and intangible contract rights and patents, as well as its cars and other tangible property, and that the Pullman Company "took possession "of the property and the business transferred, consolidating it "with its own;" and that "the property and the business" of the Central Transportation Company were completely merged in the property and the business of the Pullman Company as the parties intended when executing the void lease; and that it had "become incorporated with the business "and property of the" cross defendant, and that compensation must therefore be made.

17. The court erred in holding that the measure of compensation to be made in such case was the value of the property, including therein the tangible and intangible property of the Central Transportation Company and its business at the time the same purported to have been transferred, in pursuance of the void lease, together with its earnings since, less the amount paid as rent.

18. The court erred in holding that the said cross defendant should pay to the said cross complainant the value of said property when transferred, and did not thereby become the owner of the property so paid for, but that the same remained the property of the said cross complainant, and that it remained entitled to the earnings made by the use of said property.

19. The court erred in rendering the opinion and judgments contained therein, which it rendered and entered on the thirteenth day of January, 1896.

20. The court erred in overruling each of the exceptions of the cross defendant to the report filed in this cause by Theodore M. Etting, Esq., Master in Chancery, and in dismissing the same and each of them.

21. The court erred in confirming the report of the Master filed and made in this court.

22. The court erred in holding that the cross defendant had refused or neglected to furnish statements and produce in evidence before the Master all the earnings called for by the order of reference to the Master, and in holding that the cross defendant had failed or refused to disclose any earnings called for by the Master under the authority of and in pursuance of the order of reference.

23. The court erred in holding that the finding of the Master was correct; that certain railway contracts belonging to the Central Transportation Company, and which were originally made to continue "during the continuance of incorporation" of the Central Transportation Company, were continued in force and extended for the period of ninety-nine years by force of the Act of the Legislature of the State of Pennsylvania of the 9th of February, A. D. 1870, by which the said Transportation Company was given a corporate life for a period of ninety-nine years from the time of the expiration of its then existing charter; and the court erred in not holding that such effect of the said legislative Act of the 9th of February, 1870, was in conflict with and would be forbidden by article I., section 10, of the Constitution of the United States, which prohibits on the part of the States any enactment impairing the obligation of contracts.

24. The court erred in holding that the Master was entitled to call under his order of reference upon the cross defendant for statements of earnings made after the expiration according to their original terms, of railway contracts made to continue during the incorporation of the Central Transportation Company.

25. The court erred in holding that the valuation of the property made by the Master as of 1870 was a measure of the value of the said property so valued in 1885, and in holding that the value in 1885 was presumably greater of such property than in 1870.

26. The court erred in holding that the cross complainant was entitled to recover the value of the property assumed to have been transferred in 1870, and the earnings of the property from that time until the lease was declared void by the cross defendant, and then interest thereafter on the amount of said valuation.

27. The court erred in holding that it would treat the said void contract of lease as executed "up to 1885," and that "to "the extent its provisions were executed, the court will not in- "terfere," and in confining the provisions so treated as executed to the reception of earnings on the one hand by the cross defendant, and of the reserved rental under the lease by the cross complainant on the other, and in not holding that other matters were equally executed, and that during that period prior to 1885 all the assigned railway contracts had expired and no longer existed, and had no value whatever, because they had been used up and exhausted in making the earnings to which the court holds the cross complainant to be entitled.

28. The court erred in confirming the valuation made by the Master of the property alleged to have been transferred to and received by the cross defendant in 1870, because the said valuation was made by the Master upon an unlawful and improper basis, namely, the market value of the shares of the capital stock of the Central Transportation Company, and equalled the value so ascertained of the entire capital stock of the said Transportation Company, whereas such valuation necessarily included elements of value to the Transportation Company which it could not assign and transfer, and also unlawful elements for which no consideration could lawfully be recovered.

29. The court erred in making and entering the final decree in this cause.

ARGUMENT.

Out of the twenty-nine assignments of error filed by appellant in this case there are but three which purport to relate to any question which under the Act of March 3d, 1891, would give this court jurisdiction to entertain an appeal. These three assignments are as follows:—

7. The court erred in holding that the subject matter of the said cross bill, being matter of a purely legal nature, and of the enforcement of a purely legal right, was not excluded from the cognizance of equity by the force of the seventh amendment to the Constitution of the United States.

8. The court erred in not holding that the subject matter of said cross bill was the proper subject matter of action at law only, and of trial at law and by jury, both under the provisions of the seventh amendment of the Constitution of the United States and of section 723 of the Revised Statutes of the United States.

23. The court erred in holding that the finding of the Master was correct; that certain railway contracts belonging to the Central Transportation Company, and which were originally made to continue "during the continuance of incorporation" of the Central Transportation Company, were continued in force and extended for the period of ninety-nine years by force of the Act of the Legislature of the State of Pennsylvania of the 9th of February, A. D. 1870, by which the said Transportation Company was given a corporate life for the period of ninety-nine years from the time of the expiration of its then existing charter; and the court erred in not holding that such effect of the said legislative Act of the 9th of February, 1870, was in conflict with and would be forbidden by article I., section 10, of the Constitution of the United States, which prohibits on the part of the States any enactment impairing the obligation of contracts.

It will be seen that these assignments raise but two questions, viz.:—

1. Whether the decision of the Circuit Court that, under the general principles of equity jurisprudence, the case was one in which the respondent was entitled to affirmative relief by cross bill, was the deprivation of a constitutional right of complainant to a jury trial, which gave complainant a right to appeal directly to the Supreme Court of the United States instead of to the Circuit Court of Appeals.

2. Whether the decision of the Circuit Court that, in valuing some of the contracts of a corporation which by their terms were to continue "during the continuance of the incorporation," such contracts were to be construed as continuing during an extension of the term of the charter by a statute not referring to the contracts, involved any question as to the constitutionality of the statute which would give the parties a right to appeal to the Supreme Court of the United States instead of to the Circuit Court of Appeals.

These questions will be considered separately, but before discussing them it may be well to cite the portion of the Act of March 3d, 1891, and of the Constitution of the United States, upon which the appellant has based its claim to an appeal to this court:—

ACT MARCH 3D, 1891.

SEC. 5. That appeals or writs of error may be taken from the district courts or from the existing circuit courts direct to the Supreme Court in the following cases:—

In any case in which the jurisdiction of the court is in issue; in such cases the question of jurisdiction alone shall be certified to the Supreme Court from the court below for decision.

From the final sentences and decrees in prize causes.

In case of conviction of a capital or otherwise infamous crime.

In any case that involves the construction or application of the Constitution of the United States.

In any case in which the constitutionality of any law of the United States or the validity or construction of any treaty made under its authority is drawn in question.

In any case in which the constitution or law of a State is claimed to be in contravention of the Constitution of the United States.

Nothing in this Act shall affect the jurisdiction of the Supreme Court in cases appealed from the highest court of a State nor the construction of the statute providing for review of such cases.

CONSTITUTION OF THE UNITED STATES, SEVENTH AMENDMENT.

In suits at common law where the value in controversy shall exceed twenty dollars the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law.

As to the first question :—

WHETHER THE DECISION OF THE CIRCUIT COURT THAT, UNDER THE GENERAL PRINCIPLES OF EQUITY JURISPRUDENCE, THE CASE WAS ONE IN WHICH THE RESPONDENT WAS ENTITLED TO AFFIRMATIVE RELIEF BY CROSS BILL, WAS THE DEPRIVATION OF A CONSTITUTIONAL RIGHT OF COMPLAINANT TO A JURY TRIAL, WHICH GAVE COMPLAINANT A RIGHT TO APPEAL DIRECTLY TO THE SUPREME COURT OF THE UNITED STATES INSTEAD OF TO THE CIRCUIT COURT OF APPEALS.

In the court below the question arose in this way. Pullman's Palace Car Company had originally filed a bill in equity asserting that its lease from the Central Transportation Company was not in force for the reason, *inter alia*, that it was *ultra vires* and against public policy, and further averring that the interference of a court of equity was necessary to state an account and fix the compensation for such property of the Central Transportation Company as was in the hands of Pullman's Palace Car Company and could not be returned, the language of the bill being as follows (Record, pages 20 and 21, folios 29-31) :—

And your orator shows that in said lease it is recited that the said contract of lease is made on the part of the defendant, the said Central Transportation Company, under an Act of the General Assembly of the Commonwealth of Pennsylvania therein named, approved the ninth day of February, A. D. 1870, a copy whereof is hereto attached, marked "Exhibit G," and referred to as a part of this bill; but your orator is advised, and therefore submits it to the court, that the said lease, being a grant, assignment and transfer of all the property, contracts and rights of the said defendant, the Central Transportation Company, and including a covenant on the part of said defendant corporation not to transact, during the existence of said lease, any of the business for the transaction of which it was incorporated, was never legally valid between the parties thereto, but was void for the want of authority and corporate power on the part of defendant to make the said contract of lease, and because the same was in violation of the charter conferring the corporate powers of said defendant, and of the purpose of its incorporation, as by the said charter, to which, for greater certainty, reference is made, your orator is advised it will appear; that the said contract of lease was never susceptible of being enforced in law by your orator against said defendant, and cannot, therefore, be construed and held to continue in force and

obligatory upon your orator; and that your orator can be under no other legal obligation or equitable duty to the defendant than to return such of the property assumed to be demised as is capable of being returned, and to make just compensation for such other of the said property as, under the said contract of lease, it ought to make compensation for, which it is willing and now offers to do. * * *

That the court may consider and decree whether said contract of lease was not made without authority of law on the part of the defendant, and in excess of its corporate powers, and in violation of its corporate duties, so as not to be enforceable against your orator beyond the obligation of your orator to make return of or just compensation for the property demised; and that an account may be taken between your orator and the defendant, and that the amount may be ascertained that should be paid by your orator to the defendant on any account whatever.

Under this bill Pullman's Palace Car Company obtained an injunction against further suits at law under the lease, and a large amount of testimony was taken which would be useful to both sides on the question of account. After the Supreme Court of the United States had affirmed a decision that the lease was void for the reasons given in the bill, Pullman's Palace Car Company sought to withdraw its bill, and the Central Transportation Company asked leave to file a cross bill. The question was argued, first on the respective motions to withdraw the original and to file the cross bill, and afterwards on demurrers filed to the cross bill for want of equity. (Record, pages 551 to 553, folios 1011 to 1017, and pages 558 to 562, folios 1025 to 1036.)

The Central Transportation Company was allowed to file its cross bill and the demurrers to this bill were overruled. (Record, page 552, folio 1015, and page 562, folio 1035.) The case then proceeded to final hearing, and resulted in a decree in favor of the Central Transportation Company. Pullman's Palace Car Company now seeks to maintain an appeal to this court upon the ground that the effect of allowing the cross bill was to deprive the original complainant of a right of trial by jury, and that therefore a constitutional question was necessarily involved.

The fallacy of the appellant's contention lies in the assumption that whenever the result of a decision is to deprive a party of an opportunity to try a question before a jury, a con-

stitutional question is necessarily involved. There are many decisions which do not involve constitutional questions but which indirectly take away the right of trial by jury. Whenever at common law the court sustains a demurrer to the declaration or complaint or directs a verdict, and whenever in equity the court overrules a demurrer based on want of equity or the existence of an adequate remedy at law, the result is the taking away of the opportunity to try before a jury; but such decisions are in no proper sense decisions of constitutional questions. The seventh amendment to the Constitution of the United States merely "preserves" the "right of trial by jury" "in suits at common law," and if under the application of the principles of common law or of equity as they existed at the time of the adoption of the Constitution the right to a jury trial does not exist, the constitutional provision has no application. It may be said that if the court errs in interpreting or applying these principles of common law or equity the result is a deprivation of the constitutional right, but this is an indirect result, not arising from an erroneous decision of the constitutional question, but an erroneous decision on the other questions of general jurisprudence, and the remedy for such erroneous decision on the general principles of law is by appeal to the Circuit Court of Appeals, to whom is given the decision of questions not constitutional. To hold otherwise would be to give a right to appeal directly to the Supreme Court of the United States wherever the effect of the decision below was to eliminate a jury trial, a result never contemplated by the Act of March 3d, 1891.

The decisions of this court have been in entire accord with the principles above suggested. In the case of—

In re Lennon, 150 U. S., 393 (1893),

a railroad company filed a bill in the United States Circuit Court, and obtained an injunction to restrain another railroad company from refusing to receive its cars. Subsequently the defendant company applied for an attachment against some of its employees who had refused to haul the cars of the plaintiff company. One of the employees after hearing was fined and committed. He applied to the same court for a writ of *habeas*

corpus, on the ground that as he was not a party to the original cause the court had no jurisdiction over him. The court denied the application and dismissed the petition. The employee thereupon appealed to the Supreme Court of the United States, and attempted to sustain his appeal on the theory that he had been deprived of his liberty without due process of law. The Supreme Court dismissed his appeal, saying (the Chief Justice delivering the opinion):—

"Nor can the attempt be successfully made to bring the "case within the class of cases in which the construction or "application of the Constitution is involved in the sense of "the statute on the contention that the petitioner was de- "prived of his liberty without due process of law. The "petitioner does not proceed on any such theory, but entirely "on the ground of want of jurisdiction in the prior case over "the subject matter and over the person of petitioner in re- "spect of inquiry into which the jurisdiction of the Circuit "Court was sought. If, in the opinion of that court, the re- "straining order had been absolutely void or the petitioner "were not bound by it, he would have been discharged, not "because he would otherwise be deprived of due process, but "because of the invalidity of the proceedings for want of "jurisdiction. The opinion of the Circuit Court was that "jurisdiction in the prior suit and proceedings existed, and the "discharge was refused, but an appeal from that judgment "directly to this court would not, therefore, be on the ground "that the application of the Constitution was involved as a "consequence of an alleged erroneous determination of the "questions actually put in issue by the petitioner."

In the case of—

Treat Mfg. Co. *vs.* Standard Steel & Iron Co., 157 U. S., 674 (1895),

the action was at common law, and the court below directed a verdict for defendant. An appeal was taken directly to the Supreme Court of the United States, but this appeal was, on motion, dismissed, the court (the Chief Justice delivering the opinion) saying:—

This was an action of trespass on the case. At the conclusion of the trial the defendants moved the court to charge the jury to find the issues for defendants, which motion was granted, and the jury was directed upon the whole case to return a verdict for defendants, plaintiff duly excepting. Thereupon the jury returned a verdict accordingly; plaintiff moved for a new trial, which was denied, and judgment was given against plaintiff on the verdict. This judgment was rendered December 3d, 1890. The writ of error from this court was brought November 24th, 1891. The only ground relied on to sustain the jurisdiction of this court is that the case "involves the construction or application of "the Constitution of the United States," because plaintiff in error was deprived of the right of trial by jury. But it is well settled that where the trial judge is satisfied upon the evidence that the plaintiff is not entitled to recover, and that a verdict, if rendered for plaintiff, must be set aside, the court may instruct the jury to find for the defendant. Grand Chute *vs.* Winegar, 15 Wall, 355; Marion County *vs.* Clark, 94 U. S., 278; Herbert *vs.* Butler, 97 U. S., 319. *If the court errs as matter of law in so doing the remedy lies in a review in the appropriate court.*

In the case of—

Iowa Central Ry. Co. *vs.* State of Iowa, 160 U. S., 389 (1896),

the Attorney-General of the State of Iowa filed a petition in the Supreme Court of Iowa praying for a mandatory order on the Iowa Central Railway Company to operate a certain portion of its road in compliance with a decree made against another corporation. The Iowa Central Railway Company filed an answer denying that it was a party to the suit in which the decree had been made, and that it was liable to perform the decree. The railway company also filed a demand for a jury trial. The court granted the mandatory order, whereupon the railway company took a writ of error to the Supreme Court of the United States on the ground that the summary proceedings against it was in violation of rights guaranteed by the Constitution of the United States. The Supreme Court of the United States dismissed the writ of error for want of jurisdiction, saying (Mr. Justice White delivering the opinion):—

It is manifest that it was never contemplated by the framers of the Constitution that this court should sit in review, as an appellate court, of such a question as that presented by the record in the case at bar, viz., whether or not the highest court of a State erred in holding that it could

rightfully determine, from the statements in the pleadings filed by both parties to a controversy pending before it, that the averments of an answer set forth no defense to the claim of the plaintiff.

It was not a denial of a right protected by the Constitution of the United States to refuse a jury trial, even though it were clearly erroneous to construe the laws of the State as justifying the refusal. Brooks *vs.* Missouri, 124 U. S., 394; 8 Sup. Ct., 443; *Ex parte* Spies, 123 U. S., 131, 166.

In the case of—

Smith *vs.* McKay, 161 U. S., 355 (1896),

a bill in equity was filed in the Circuit Court of the United States for the District of Massachusetts. Respondents filed an answer averring that complainant, so far as he had any just cause of action, had a plain, adequate and complete remedy at law, and moved on this ground to dismiss the bill. This motion was denied, and the cause proceeded to a final decree in favor of complainant. Respondent thereupon took an appeal directly to the Supreme Court of the United States. The latter court dismissed the appeal, saying (Mr. Justice Shiras delivering the opinion):—

It is further contended by the appellee that this appeal should be dismissed because there is no right of appeal to this court in such a case as the present one.

The appellants claim that this appeal is within the first class under section 5 of the Judiciary Act of March 3d, 1891, providing that "in any "case in which the question of the jurisdiction of the court is in issue, "in such case the question of jurisdiction alone shall be certified to the "Supreme Court from the court below for decision."

The position of the appellee is that only questions of Federal jurisdiction can be brought directly here; that, if the Circuit Court has jurisdiction of the parties and of the matters in dispute, the fact that it is contended that it has no jurisdiction on its equity side raises no question of jurisdiction, within the meaning of the Act under which this appeal is taken; and that whether a case has been made out by the plaintiff in equity or at law is not a question that puts in issue the jurisdiction of the court, in the sense in which that phrase is used in the Judiciary Act. The question thus raised has never been directly decided by this court. It did present itself in the case of World's Columbian Exposition Case, 18 U. S. App., 42; 6 C. C. A., 58; 56 Fed., 654. That was a case in which the Circuit Court of the United States for the Northern District of Illinois had granted, at the suit of the United States, an injunction against the World's Columbian Exposition, a corporation of the State of Illinois, restraining the defendant from opening the exposition grounds or buildings to the public on Sunday. From this decree an appeal was taken to

the Circuit Court of Appeals for the Seventh Circuit, and that court, speaking through Chief Justice Fuller presiding, stated and disposed of the question as follows:—

"The appellees have submitted a motion to dismiss the appeal upon "the grounds that the jurisdiction of the Circuit Court was in issue; "that the case involved the construction or application of the Constitu- "tion of the United States; that the constitutionality of laws of the "United States was drawn in question therein; that therefore the ap- "peal from a final decree would lie to the Supreme Court of the United "States, and not to this court; and hence that this appeal, which is "from an interlocutory order, cannot be maintained under the seventh "section of the Judiciary Act of March 3d, 1891.

"We do not understand that the power of the Circuit Court to hear "and determine the cause was denied, but that the appellants con- "tended that the United States had not, by their bill, made a case prop- "erly cognizable in a court of equity. The objection was the want of "equity, and not the want of power. The jurisdiction of the Circuit "Court was therefore not in issue, within the intent and meaning of the "Act."

We regard this as a sound exposition of the law, and, applied to the case now in hand, it demands a dismissal of the appeal on the ground that the objection was not to the want of power in the Circuit Court to entertain the suit, but to the want of equity in the complainant's bill. The appellants' contention in this respect would require us to entertain an appeal from the Circuit Court in every case in equity in which the defendant should choose to file a demurrer to the bill on the ground that there was a remedy at law.

When the requisite citizenship of the parties appears, and the subject matter is such that the Circuit Court is competent to deal with it, the jurisdiction of that court attaches; and whether the court should sustain the complainant's prayer for equitable relief, or should dismiss the bill with leave to bring an action at law, either would be a valid exercise of jurisdiction. If any error were committed in the exercise of such jurisdiction, it could only be remedied by an appeal to the Circuit Court of Appeals.

The learned counsel for the appellants claims in his brief that the case of Mississippi Mills *vs.* Cohn, 150 U. S., 202, sustains his present contention.

That was an appeal from the Circuit Court of the United States for the Western District of Louisiana, under the provisions of the Act of February 25th, 1889 (25 Stat., 693, ch. 36). The court below dismissed the complainant's bill in equity on the ground that no relief could be had in equity because, under the practice prescribed by a State law, there was a remedy by an action at law. But this court held that the jurisdiction of Federal courts, sitting as courts of equity, cannot be enlarged or diminished by State legislation, and that hence the Circuit Court had committed error by allowing a State law to overturn the well-settled

practice in the Federal court. In the condition of the Federal statutes at that time there was no Circuit Court of Appeals, and the plaintiff's remedy, given him by the Act of February 25th, 1889, was by appeal to this court. Should such a state of facts again arise, the remedy would now be by appeal to the Circuit Court of Appeals.

Applying the principles laid down in these cases to the present case, the conclusion is inevitable that the appeal should be dismissed. The decree below sustaining the cross bill was not based on the decision of any constitutional question, but on the decision of the question whether under the well-settled principles of equity jurisprudence the respondent was entitled to equitable relief under a cross bill. If the court below erred in the decision of that question, the remedy under the Act of March 3d, 1891, was by appeal to the Circuit Court of Appeals, and not to the Supreme Court of the United States.

As to the second question :—

WHETHER THE DECISION OF THE CIRCUIT COURT THAT IN VALUING SOME OF THE CONTRACTS OF A CORPORATION WHICH BY THEIR TERMS WERE TO CONTINUE "DURING THE CONTINUANCE OF "THE INCORPORATION," SUCH CONTRACTS WERE TO BE CONSTRUED AS CONTINUING DURING AN EXTENSION OF THE TERM OF THE CHARTER BY A STATUTE NOT REFERRING TO THE CONTRACTS, INVOLVED ANY QUESTION AS TO THE CONSTITUTIONALITY OF THE STATUTE WHICH WOULD GIVE A RIGHT OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES INSTEAD OF TO THE CIRCUIT COURT OF APPEALS.

This question does not require much argument. The charter of the Central Transportation Company was originally for twenty years, and would have expired in 1882. The Pennsylvania Legislature by a statute (printed in the Record, page 532, folio 973) extended the charter for ninety-seven years. The statute did not in any way refer to existing contracts or attempt to extend them. No question as to the validity or constitutionality of this statute has ever been raised or decided. In the course of the present suit it became necessary to ascertain the value of the original Central Transportation Com-

pany's plant, which at the time of the Pullman lease included various railroad contracts. Some of these contracts were limited to continue "during the continuance of the incorporation" of the Central Transportation Company (Record, page 1144, folio 1944), and in considering their value as a part of the plant the question incidentally arose whether the legal construction of their language was that they were to continue during the corporate life of the Central Transportation Company, or only until the expiration of the period originally named in its charter. The question never was raised by the parties to the contracts, and was only raised in this suit upon the question of the value of the plant. The Master decided that the contracts were to be construed as continuing during the corporate life of the Central Transportation Company, and his report was confirmed by the court. Pullman's Palace Car Company, in order to obtain an appeal to this court, now contend that the effect of the statute in connection with the decision of the Master as to the meaning of the contract was to extend the terms of the original contract, and that therefore the statute impaired the obligation of the contract and was unconstitutional. The statement of this proposition is its best refutation. No question as to the validity of the statute was raised. It did not purport to affect the contracts in any way. The question raised was as to the meaning of the parties to the contracts as interpreted by the language used. This was not a constitutional question and could not justify an appeal to the Supreme Court of the United States.

For the foregoing reasons it is submitted that the appeal should be dismissed.

FRANK P. PRICHARD,
JOHN G. JOHNSON,
For Appellee.

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1896. No. 463.

Pullman's Palace Car Company, Appellant,

vs.

Central Transportation Company, Appellee.

Sur MOTION TO DISMISS APPEAL.

REPLY TO APPELLANT'S BRIEF.

In a brief upon a motion to dismiss for want of jurisdiction, a discussion upon the merits would seem to be out of place, and although in the argumentative "statement" contained in appellant's brief there are many assertions which, it is believed, are contrary to the record, the appellee will not waste the time of the court in discussing them. There is, however, one statement which ought not to be allowed to pass unnoticed. On page 6 of the brief, appellant, speaking of the judgment of this court in Central Transp. Co. *vs.* Pullman Car Co., 139 U. S., 24, says:—

> The record shows this judgment of this court reviewed and a contrary conclusion reached by Butler, District Judge, sitting in the Circuit Court.

This statement is entirely at variance with the fact. It so happened that every decision in the Central Transportation litigation—the granting of the injunction upon the bill in

equity filed by the Pullman Company, the judgment of nonsuit in the suit on the lease and the final hearing on the bill in equity and cross bill—were made by a court composed of two judges, one a circuit judge and the other the district judge named in appellant's brief. Judge Butler had taken part in the judgment of nonsuit which this court affirmed in Central Transportation Company *vs.* Pullman Car Company, 139 U. S., 24, and he had previously taken part in the granting of the injunction on the application of the Pullman Company. It would be strange indeed if he had "reviewed" a decision affirming his own judgment and had "reached a contrary "conclusion" from the affirmance of his own conclusion. Nothing of the kind occurred. He, in conjunction with Judge McKennan, had decided that the lease was invalid and that no action could be maintained on it, and had granted a nonsuit. The Supreme Court affirmed the judgment, but as if to guard against any use of it to confiscate the leased property, Mr. Justice Gray, in delivering the opinion, had added :—

> A contract *ultra vires* being unlawful and void, not because it is in itself immoral, but because the corporation, by the law of its creation, is incapable of making it, the courts, while refusing to maintain any action upon the unlawful contract, have always striven to do justice between the parties, so far as could be done consistently with adherence to law, by permitting property or money parted with on the faith of the unlawful contract to be recovered back or compensation to be made for it.

Up to this time the Pullman Company had disclaimed any intention to keep the property without compensation, and was actively prosecuting its bill in equity, based, *inter alia*, upon an allegation that the lease was void, and that the property was of such a nature that the aid of a court of equity was necessary to state an account and determine the compensation. Immediately, however, upon obtaining the affirmance of the decision that the lease was void, it went into the court below and sought to withdraw its bill and to keep the property without any compensation. In deciding that it could not do so the court below, so far from coming to an opposite conclusion from this court, followed the suggestion made

in the opinion affirming the judgment. In comparing the two opinions appellant has selected portions of each, and has failed to print the portion of Mr. Justice Gray's opinion above cited. On the law the two opinions are in entire harmony, and any apparent discrepancy as to facts arises from the different circumstances disclosed by the evidence. In the case in which the judgment was affirmed by this court there was no evidence as to good faith or as to value of property, except the inferences which might be drawn from the lease itself. In the equity suit there was a mass of testimony; the opinion of the court was delivered in the light which that testimony threw upon the case. Nowhere in the opinions is there any conflict as to legal principles, and the opinion of the court below is a direct application of the principles laid down by the court above to the facts as disclosed by the evidence taken in the equity case. It may be added that Judge Acheson sat with Judge Butler and took part in the decision sustaining the cross bill, and that Judge Dallas sat with him and delivered a concurring opinion on the final hearing.

It is the privilege, and in this case it seems to be the pleasure, of an appellant to attack the court below, but there would seem to be a curious ingratitude in such an attack upon a court which had first upheld the appellant's contention that the lease was invalid and whose judgment, affirmed by this court, is relied upon by appellant as its protection against the enforcement of the rental which it had agreed to pay.

FRANK P. PRICHARD,
JOHN G. JOHNSON,
For Central Transportation Company.

In the Supreme Court of the United States.

Pullman's Palace Car Company, Appellant,	October Term, 1897.
vs.	Nos. 141 and 496.
Central Transportation Company, Appellee.	

BRIEF FOR APPELLEE.

STATEMENT OF THE CASE.

It is believed that the labor of the court in examining the voluminous record in this case will be lightened by a clear, concise and chronological statement of the facts.

This was a bill in equity by Pullman's Palace Car Company against the Central Transportation Company, and a cross bill by the Central Transportation Company against Pullman's Palace Car Company. The two companies, plaintiff and defendant, had been sleeping-car companies, of about the same size, but occupying different territories; the Central Transportation Company operating a system of lines from St. Louis east to the Atlantic and Pullman's Palace Car Company operating a system of lines from Buffalo west to the Pacific. Negotiations entered into for consolidation resulted in a lease of the Central Transportation Company by Pullman's Palace Car Company for ninety-nine years, under a Pennsylvania statute specifically drawn by counsel for that purpose and

passed by the legislature. After the lease had been in operation fifteen years, and after the Central Transportation Company's property had been so absorbed into the Pullman system that identification and separation had become impossible, the two companies quarreled over a clause of the lease. The Central Transportation Company brought suits at law to recover accruing installments of rent, and Pullman's Palace Car Company filed the present bill.

Although long and somewhat involved, this bill alleged in substance, first, that there had been an agreement to diminish the rental; second, that if that agreement had not been consummated, there had been an election by the Pullman Company to annul the lease under a clause giving it that right; and, third, that the lease was *ultra vires* and void. The bill further set out that some of the property existed in specie and some had been destroyed; that an important contract with the Pennsylvania Railroad Company had been renewed in the name of the Pullman Company and could not be reassigned to the Central Transportation Company, and that if the lease had been annulled or was void, there was no obligation on the part of the Pullman Company except to return such property as could be returned and make compensation for such as could not. The bill prayed, first, for an injunction against further suits at law for rent; second, for a decree whether there had not been an agreement for a reduced rental, and if not, for a decree that the lease had been annulled or was void; third, that an account might be stated and such decree made for return of property existing in specie and compensation for property not capable of return as would do equity between the parties. Upon the filing of this bill the court after argument granted an injunction against suits at law for further rental, but refused to interfere with pending suits for rental previously accrued. Pullman's Palace Car Company thereupon set up as a defense to one of these pending suits at law the claim already made in the bill in equity, viz., that the lease itself was invalid. This defense the

court sustained, and its decision was affirmed on appeal. (Central Transp. Co. *vs.* Pullman's Palace Car Co., 139 U. S., 24.) In the meanwhile the equity suit had proceeded to issue and testimony to the extent of four hundred printed pages had been taken. Immediately, however, upon the decision of the Supreme Court that the lease was invalid, Pullman's Palace Car Company moved to dismiss its bill by which it had tendered restitution of or compensation for the property, and claimed that the effect of the decision was to relieve it from liability to restore or compensate. The Central Transportation Company opposed this motion, and asked leave to file a cross bill praying for discovery, account, return of existing property and compensation for property which could not be returned. The motion to dismiss was refused, and leave was granted to file the cross bill. (Record, page 552.) (Pullman's Palace Car Co. *vs.* Central Transp. Co., 49 Fed., 261.) The cross bill and an answer thereto were filed and testimony in addition to that already taken under the original bill was put in. Subsequently the cause came on to final hearing before Judges Dallas and Butler. After argument the court in a written opinion (Record, page 745) held that the property of the Central Transportation Company must be returned or paid for; that return had become impossible, and that the measure of compensation was the value of the property when received, together with its earnings since, less the amount paid as rent, and that the value must be ascertained from a careful examination of the property, the business, and its earnings at the time they passed into the hands of the Pullman Company and subsequently. For the purpose of ascertaining these values the court appointed Theodore M. Etting, Esq., Master. (Record, page 1126.) (Pullman's Palace Car Co. *vs.* Central Trans. Co., 65 Fed., 158.)

The Master subsequently filed his report, in which he found the following facts: The Central Transportation Company was incorporated December 30th, 1862, for twenty years, originally with a capital of $200,000, which from time to time had been increased until it reached

$2,000,000 prior to the time of the lease, and which was still further increased at the time of the lease by the issue of $200,000 of stock for the purchase of patents, making a total capital of $2,200,000. It had a net earning capacity of nine and one-half per cent. per annum, increased to about eleven and one-half per cent. per annum by the purchase of patents hereinafter mentioned, on which the company had been paying nearly $50,000 per annum royalty, and it had a business which indicated a healthy growth. Its earnings were made by operating lines of sleeping cars extending from New York, Philadelphia, Baltimore and Washington to Chicago and St. Louis. There were sixteen written contracts with different railroads, covering the operation of most of these lines, but not all of them, as a few lines were operated without any written contract. Pullman's Palace Car Company had been incorporated in 1867 with a capital of $1,250,000, subsequently increased to $1,750,000, and with net receipts equal to thirteen per cent. per annum. It operated lines under contracts with lines mostly north and west of Chicago, and extending to the Pacific coast; but it had no means of reaching Philadelphia, Baltimore or Washington from the West, and its only means of reaching New York was by the Grand Trunk and Michigan Central Railroad to Buffalo and the Delaware, Lackawanna and Western Railroad to New York. Its cars were superior in comfort and safety to those of the Central Transportation Company, and this fact affected travel on the lines of the latter company, especially those over the Pennsylvania Railroad and its affiliated companies. In addition to this, the entire condition of sleeping-car transportation at that time was unsatisfactory. Passengers were obliged to change cars at points where the two systems came in contact with each other. The Pennsylvania Railroad and the roads forming its system could not make contracts with Pullman's Palace Car Company because of the existing contracts with the Central Transportation Company. There was pending litigation between the two companies, the Central Transportation Company claiming

that the Pullman Company had infringed its patents. Under these conditions it appeared to be desirable, in the interests of both the sleeping-car companies, the railroads and the public, that a consolidation of the two companies should be effected. Negotiations resulted in: (1) A purchase by the Central Transportation Company of all the patents under which it had been operating at a royalty. To enable this purchase to be made the capital was increased from $2,000,000 to $2,220,000. (2) A lease by the Central Transportation Company to the Pullman Company for ninety-nine years, at a rental of twelve per cent. per annum on $2,220,000, and an assignment by the Central Transportation Company to the Pullman Company of all the former's cars, contracts and patents. (3) A contract between the Pullman Company and the Pennsylvania Railroad Company whereby the various contracts under which the Central Transportation Company had been operating lines over the roads comprising the Pennsylvania system were exchanged for a single fifteen-year contract in the name of the Pullman Company. This contract allowed the equipment to be made up in part of the old Central Transportation Company cars and in part of new cars to be furnished by the Pullman Company, the railroad undertaking to place the old cars in first-class condition.

To obtain legislative authority for the lease by one sleeping-car company to the other, the counsel for the Pennsylvania Railroad Company prepared a statute, which was passed by the Pennsylvania Legislature, intended to authorize the lease, extend the corporate existence of the Central Transportation Company for ninety-nine years and authorize the issue of $200,000 of new stock.

The effect of these agreements, as stated by the Master, was: "The Pennsylvania Railroad obtained forthwith, for "its entire system, Pullman cars and Pullman connections; "agreeing, however, to accept, as a part of its new equip- "ment, old cars of the Central Transportation Company, "which were to be put in first-class condition. The Central "Transportation Company was thus saved from an expen-

"diture necessary to provide a proper equipment of cars and "better service, which, under other circumstances, would "have been unavoidable, and received at once a sum exceed-"ing its then earning power by about one-half of one per "cent., and which payment, it was anticipated, it would "continue to receive. An harmonious system of sleeping-"car transportation was thereby established, extending "from the Atlantic to the Pacific, the receipts of which, it "was believed, would be sufficiently large to secure the "continuous payment of the above rental, and also to in-"sure greater prospective value to the Central Transporta-"tion Company's shares. The Pullman Company ac-"quired an entrance to the principal cities of the Atlantic "seaboard by favored routes. It at once took the place of "the Central Transportation Company on the Pennsylva-"nia lines, so called, for fifteen years, and also on the lines "of all other railroad companies covered by the assigned "contracts of the Central Transportation Company; and "there was thus established reciprocal relations, which "have, for the most part, since continued. It attained an "ascendency in the sleeping-car business which has never "since been disputed, as well as a monopoly of a most val-"uable territory for fifteen years."

The Master further reported that in all of the sixteen contracts between the various railroads and the Central Transportation Company the railroads were to furnish fuel and light, and keep the cars in good order and condition, and in some of them the railroads undertook to renew worn-out parts. Some of the contracts expired at definite dates, others ran for the life of the patents previously taken out. Six of them ran "during the continuance of the "incorporation of" the Central Transportation Company. The Master held that this included the continued corporate existence under the statute subsequently passed, extending the corporate life of the Central Transportation Company beyond the original limit of its charter. After the execution of the lease to the Pullman Company, some of the contracts were replaced by new ones taken in the name of the Pullman Company, and some were canceled. The Master

further reported that at the time of the lease the rolling stock of the Central Transportation Company consisted of about one hundred and nineteen cars and their equipments, of which the total cost was about $950,000, and the value at the time of the lease about $712,000, and that the Pullman Company had actually received from various railroads, in settlement of cars retired or destroyed, $556-933.61, and had on hand thirty-three cars. The Master reported, however, that, on account of the peculiar nature of the contracts, it was, in his judgment, impossible to correctly value the cars, apart from the obligations to maintain and use them set forth in the contracts. The Master further reported that the value of the patents was $266,000—that being the price paid for them at the time of the lease. He further reported that it was impossible to make a separate appraisal or valuation of the contracts, owing to their peculiar nature and varying terms of duration. The Master then proceeded to report the value of the property taken as a whole. He found that there were three measures of value, which served to check or verify each other, viz.: (1) The testimony of a witness who knew the property well, who was competent to appraise it, and who estimated it to be worth at least $3,300,000. (2) The market value of the stock of the company at the time of the lease, which was between $2,464,000 and $2,640,-000. (3) The earning capacity of the property taken in connection with the probable amount to be put aside to restore the capital on a fair expectancy of probable life, and this value the Master estimated as at least fifty dollars per share. The Master then reported as follows: "The several "forms of valuation above considered may be summed up "as follows: If Torrey's valuation is to be adopted, the capi-"tal stock of the company was worth about seventy-five "dollars a share. If the public estimate is to be adopted, "the stock was worth from fifty-six dollars to sixty dollars "a share. If the estimate predicated on earnings, coupled "with probable life, is to be adopted, the stock was worth "at least fifty dollars a share. The two latter estimates "serve to verify each other, and to indicate that Torrey's

"testimony is excessive. They are both so far below the "capitalized value of the rental agreed to be paid by the "Pullman Company that either of them, if accepted, would "leave a large margin for the illegal consideration which "the court has directed shall be excluded from the account. "Which of the two is to be preferred? And, if the price "of the stock on the street is to be accepted as the measure "of value of the property when transferred, what figure is "to be adopted? The estimate of probable life is hypo- "thetical. The value of the stock on the street is a posi- "tive indication of the estimate placed on the property "by the public. That it is not entirely a satisfactory meas- "ure of value must be conceded, but in the judgment of "the Master, supported as it is by the best independent "estimate that the evidence affords, it should be accepted "as the fairest criterion of value. This amount has, ac- "cording to the testimony, been placed at from fifty-six "dollars to sixty dollars a share; and, whilst the evidence "as to these values is not as satisfactory as the Master "would wish, it is nevertheless uncontradicted. As be- "tween the two quotations above named, which indi- "cate the fluctuations of the stock in value, the Master "has taken the average, or, in other words, a valuation "of fifty-eight dollars a share. This, he believes, is as "fair and equitable a valuation as is possible, under the "testimony; and he accordingly reports the value of the "property, when received, is by him appraised at fifty- "eight dollars a share, or $2,552,000." With regard to the earnings of the property after it had been de- livered under the lease, the Master reported: "An accu- "curate ascertainment of the earnings, without further "evidence than that which has been produced before the "Master, is impossible. The plant, upon the execution of "the lease, became absorbed in a system in which the ele- "ments of new contracts, additional cars and added lines "entered so largely that, from the evidence presented, it "is not possible to distinguish accurately the earnings ap- "plicable to the property assigned. General results, there- "fore, can only be ascertained." The Master then pro-

ceeded to discuss the contentions of the respective parties as to the earnings, under certain statements which had been produced, and held that neither estimate was satisfactory or complete. He then reported as follows: "The Pull-"man Company has failed, though requested by the Mas-"ter, to furnish him with such information, which would, "he believed, have enabled him to state an account. In so "doing it has doubtless conformed to what its counsel have "advised as the true interpretation of the order of refer-"ence, but the testimony furnished has not been sufficient "to make it possible for the Master to comply with the "directions of the court, as they are understood by him; "and he accordingly is compelled to report that he has "not as yet been furnished with sufficient data to enable "him to ascertain the difference between the rental paid "to the Central Transportation Company from January "1st, 1870, to January 1st, 1885, and the receipts derived "by the Pullman Company from its use of the property "transferred during the period above referred to."

Both parties filed exceptions to this report. The Pullman Company prefaced its exceptions by a protest that the Central Transportation Company was not entitled to any recovery, and that the Pullman Company was protected by the Statute of Limitations. The exceptions, which were voluminous, covered substantially three objections, viz.: (1) That the Pullman Company was not accountable for the intangible property, such as contracts, &c.; (2) that the valuation was too high; (3) that the rents paid more than compensated for all the property received. There were numerous other exceptions to matters of detail, but the above comprehended the substantial objections. The exceptions of the Central Transportation Company were to the refusal of the Master to find that the property was worth at least $3,000,000, and his failure to report that the failure of the Pullman Company to furnish the information necessary to state an account of earnings entitled the Central Transportation Company to a decree for the value of the property, without reference to the earnings. On the argument the Central Transporta-

tion Company, for the purpose of avoiding delay, offered to waive any claim for excess of earnings over the rental paid, and asked for a decree for the value of the property, with interest from the time when the Pullman Company repudiated the lease.

The exceptions were argued before the same judges who had sat at final hearing. After argument the exceptions were dismissed, the court holding that compensation must be made for the entire business received and absorbed, including both contracts and cars; that the valuation made by the Master was not unjust to the Pullman Company; that the inference from the testimony was that the earnings during the lease were equal to the rent paid; that the testimony produced on this point was sufficient to put the burden of proof on the Pullman Company; that while the value for which the latter company was responsible was the value at the repudiation of the lease, that value, owing to the absorption of the property, would be difficult of ascertainment except by reference to the value at the date of the lease; and that as the evidence justified the presumption that the property increased in value during the lease, the amount of compensation to be paid should be the valuation of the Master, with interest from the date of the repudiation of the lease. The court therefore entered a decree in favor of the Central Transportation Company for $2,552,000, with interest from the date of the repudiation of the lease. (Record, page 1194.) (Pullman's Pal. Car Co. *vs.* Cent. Trans. Co., 72 Fed. Rep., 211.)

Thereupon Pullman's Palace Car Company took an appeal to the Supreme Court of the United States, despite the protest of the Central Transportation Company that no Federal question was involved. (Record, page 1199.) Three months afterwards, while this appeal was pending and undetermined, Pullman's Palace Car Company took another appeal to the Circuit Court of Appeals for the Third District. This second appeal came on to be heard first, and after argument the court sustained its jurisdiction, but suspended delivery of an opinion on the merits

until the prior appeal to the Supreme Court of the United States should be determined. (Record, page 1217.) Subsequently Pullman's Palace Car Company applied to the Supreme Court for a writ of *certiorari* to bring up the case pending in the Circuit Court of Appeals, and this was granted. Both appeals are therefore now before the Supreme Court of the United States for final hearing.

ARGUMENT.

The case raises three questions:—

1. Was there any Federal question involved which would sustain the appeal to the Supreme Court of the United States?

2. Was the second appeal, which, was taken to the United States Circuit Court of Appeals subsequent to and pending an appeal to the Supreme Court of the United States, valid?

3. If either appeal was valid, was the decree appealed from erroneous?

These will be considered separately.

Was there any Federal question involved which would sustain the appeal to the Supreme Court of the United States?

Of the twenty-nine assignments of error filed by appellant upon the appeal to the Supreme Court of the United States, but three purport to relate to any question which would give that court jurisdiction. These three are:—

7. The court erred in holding that the subject matter of the said cross bill, being matter of a purely legal nature, and of the enforcement of a purely legal right, was not excluded from the cognizance of equity by the force of the seventh amendment to the Constitution of the United States.

8. The court erred in not holding that the subject matter of said cross bill was the proper subject matter of action at law only, and of trial at law and by jury, both under the provisions of the seventh amendment of the Constitution of the United States and of section 723 of the Revised Statutes of the United States.

23. The court erred in holding that the finding of the Master was correct; that certain railway contracts belonging to the Central Transportation Company, and which were originally made to continue "dur-"ing the continuance of incorporation" of the Central Transportation Company, were continued in force and extended for the period of ninety-nine years by force of the Act of the Legislature of the State of Pennsylvania of the 9th of February, A. D. 1870, by which the said Transportation Company was given a corporate life for the period of ninety-nine years from the time of the expiration of its then existing charter; and the court erred in not holding that such effect of the said legislative Act of the 9th of February, 1870, was in conflict with and would be forbidden by Article I., section 10, of the Constitution of the United States, which prohibits on the part of the States any enactment impairing the obligation of contracts.

It will be seen that these assignments raise but two questions, viz.:—

1. WHETHER THE DECISION OF THE CIRCUIT COURT THAT, UNDER THE GENERAL PRINCIPLES OF EQUITY JURISPRUDENCE, THE CASE WAS ONE IN WHICH THE RESPONDENT WAS ENTITLED TO AFFIRMATIVE RELIEF BY CROSS BILL, WAS THE DEPRIVATION OF A CONSTITUTIONAL RIGHT OF COMPLAINANT TO A JURY TRIAL, WHICH GAVE COMPLAINANT A RIGHT TO APPEAL DIRECTLY TO THE SUPREME COURT OF THE UNITED STATES I STEAD OF TO THE CIRCUIT COURT OF APPEALS.

2. WHETHER IN A CASE IN WHICH THE CHARTER OF A CORPORATION HAD BEEN EXTENDED BY STATUTE, AND THE COURT SUBSEQUENTLY, IN VALUING A CONTRACT WITH THAT CORPORATION CONTAINING A PROVISION THAT THE CONTRACT SHOULD CONTINUE DURING INCORPORATION, INTERPRETED THE CONTRACT AS MEANING THAT IT WAS TO CONTINUE DURING BOTH THE ORIGINAL TERM AND ANY EXTENSION, THIS INVOLVED ANY DECISION AS TO WHETHER THE STATUTE IMPAIRED THE OBLIGATION OF A CONTRACT.

These questions will be considered separately, but before discussing them it may be well to cite the portions of the Act of March 3d, 1891, and of the Constitution of the United States, upon which the appellant has based its claim to an appeal to this court:—

Act March 3d, 1891.

Sec. 5. That appeals or writs of error may be taken from the district courts or from the existing circuit courts direct to the Supreme Court in the following cases:—

In any case in which the jurisdiction of the court is in issue; in such cases the question of jurisdiction alone shall be certified to the Supreme Court from the court below for decision.

From the final sentences and decrees in prize causes.

In case of conviction of a capital or otherwise infamous crime.

In any case that involves the construction or application of the Constitution of the United States.

In any case in which the constitutionality of any law of the United States or the validity or construction of any treaty made under its authority is drawn in question.

In any case in which the constitution or law of a State is claimed to be in contravention of the Constitution of the United States.

Nothing in this Act shall affect the jurisdiction of the Supreme Court in cases appealed from the highest court of a State nor the construction of the statute providing for review of such cases.

Constitution of the United States, Seventh Amendment.

In suits at common law where the value in controversy shall exceed twenty dollars the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law.

Constitution of the United States, Article I., Section 10.

1. No State shall enter into any treaty, alliance or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law or laws impairing the obligation of contracts, or grant any title of nobility.

As to the first question:—

WHETHER THE DECISION OF THE CIRCUIT COURT THAT, UNDER THE GENERAL PRINCIPLES OF EQUITY JURISPRUDENCE, THE CASE WAS ONE IN WHICH THE RESPONDENT WAS ENTITLED TO AFFIRMATIVE RELIEF BY CROSS BILL, WAS THE DEPRIVATION OF A CONSTITUTIONAL RIGHT OF COMPLAINANT TO A JURY TRIAL, WHICH GAVE COMPLAINANT A RIGHT TO APPEAL DIRECTLY TO THE SUPREME COURT OF THE UNITED STATES INSTEAD OF TO THE CIRCUIT COURT OF APPEALS.

In the court below the question arose in this way: Pullman's Palace Car Company had originally filed a bill in equity asserting, *inter alia*, that its lease from the Central Transportation Company had been annulled under an option to annul reserved in it, and in any event was *ultra vires* and void; that the property could not all be returned in specie; that some contracts had been merged in a contract in the name of the lessee; that some cars had been destroyed, and that the interposition of a court of equity was necessary to make equitable restitution or compensation and account.

The following extracts from the bill (Record, pages 20, 21) illustrate the allegations and relief asked:—

And your orator shows that in said lease it is recited that the said contract of lease is made on the part of the defendant, the said Central Transportation Company, under an Act of the General Assembly of the Commonwealth of Pennsylvania therein named, approved the ninth day of February, A. D. 1870, a copy whereof is hereto attached, marked "Exhibit G," and referred to as a part of this bill; but your orator is advised, and therefore submits it to the court, that the said lease, being a grant, assignment and transfer of all the property, contracts and rights of the said defendant, the Central Transportation Company, and including a covenant on the part of said defendant corporation not to transact, during the existence of said lease, any of the business for the transaction of which it was incorporated, was never legally valid between the parties thereto, but was void for the want of authority and corporate power on the part of defendant to make the said contract of lease, and because the same was in violation of the charter conferring the corporate powers of said defendant, and of the purpose of its incorporation, as by the said charter, to which, for greater certainty, refer-

ence is made, your orator is advised it will appear; that the said contract of lease was never susceptible of being enforced in law by your orator against said defendant, and cannot, therefore, be construed and held to continue in force and obligatory upon your orator; and that your orator can be under no other legal obligation or equitable duty to the defendant than to return such of the property assumed to be demised as is capable of being returned, and to make just compensation for such other of the said property as, under the said contract of lease, it ought to make compensation for, which it is willing and now offers to do. * * *

And in case it shall be considered that the acts of the parties and the agreements hereinbefore stated do not constitute in legal effect an election by your orator conclusive on both parties to pay to the said defendant a share of the net revenue arising from the operation of said lease, that your orator may be held to have been entitled to exercise its option to annul said lease under the provisions of said eighth section, and that its action in that regard to that end hereinbefore stated may be held to have been valid and effectual; and that this court will lend its aid to your orator in making the surrender of demised property to the defendant and relieve your orator from the embarrassments set forth in this bill; and that the court will declare by its decree the rights of the defendants, if any, in the said contract with the Pennsylvania Railroad Company and make such disposition thereof as may be equitable, and that it may be held that your orator is not bound or holden to more than just compensation to the defendant for such of the demised property as cannot be actually restored or in literal compliance with the terms of the lease, and that your orator may be held under no obligation to continue to perform the terms of said lease and to pay the rental of $264,000 per annum therein originally reserved; and that the court may consider and decree whether said contract of lease was not made without authority of law on the part of the defendant, and in excess of its corporate powers, and in violation of its corporate duties, so as not to be enforceable against your orator beyond the obligation of your orator to make return of or just compensation for the property demised; and that an account may be taken between your orator and the defendant, and that the amount may be ascertained that should be paid by your orator to the defendant on any account whatever.

Under this bill Pullman's Palace Car Company obtained an injunction against further suits at law under the lease, and a large amount of testimony was taken which would be useful to both sides on the question of account. After the Supreme Court of the United States had affirmed a decision that the lease was void for the reasons given in

the bill, Pullman's Palace Car Company sought to withdraw its bill, and the Central Transportation Company asked leave to file a cross bill. The question was argued, first on the respective motions to withdraw the original and to file the cross bill, and afterwards on demurrers filed to the cross bill for want of equity. (Record, pages 551 to 553, folios 1011 to 1017, and pages 558 to 562, folios 1025 to 1036.)

The Central Transportation Company was allowed to file its cross bill and the demurrers to this bill were overruled. (Record, page 552, folio 1015, and page 562, folio 1035.) The case then proceeded to final hearing, and resulted in a decree in favor of the Central Transportation Company. Pullman's Palace Car Company now seeks to maintain an appeal to this court upon the ground that the effect of allowing the cross bill was to deprive the original complainant of a right of trial by jury, and that therefore a constitutional question was necessarily involved.

The fallacy of the appellant's contention lies in the assumption that whenever the result of a decision is to deprive a party of an opportunity to try a question before a jury, a constitutional question is necessarily involved. There are many decisions which do not involve constitutional questions but which indirectly take away the right of trial by jury. Whenever at common law the court sustains a demurrer to the declaration or complaint or directs a verdict, and whenever in equity the court overrules a demurrer based on want of equity or on the existence of an adequate remedy at law, the result is the taking away of the opportunity to try before a jury; but such decisions are in no proper sense decisions of constitutional questions. The seventh amendment to the Constitution of the United States merely "preserves" the "right of trial "by jury" "in suits at common law," and if under the application of the principles of common law or of equity as they existed at the time of the adoption of the Constitution the right to a jury trial does not exist, the constitutional provision has no application. It may be said that

if the court errs in interpreting or applying these principles of common law or equity the result is a deprivation of the constitutional right, but this is an indirect result, not arising from an erroneous decision of the constitutional question, but an erroneous decision on the other questions of general jurisprudence, and the remedy for such erroneous decision on the general principles of law is by appeal to the Circuit Court of Appeals, to whom is given the decision of questions not constitutional. To hold otherwise would be to give a right to appeal directly to the Supreme Court of the United States wherever the effect of the decision below was to eliminate a jury trial, a result never contemplated by the Act of March 3d, 1891.

The decisions of this court have been in entire accord with the principles above suggested. In the case of—

In re Lennon, 150 U. S., 393 (1893),

a railroad company filed a bill in the United States Circuit Court, and obtained an injunction to restrain another railroad company from refusing to receive its cars. Subsequently the defendant company applied for an attachment against some of its employees who had refused to haul the cars of the plaintiff company. One of the employees after hearing was fined and committed. He applied to the same court for a writ of *habeas corpus*, on the ground that as he was not a party to the original cause the court had no jurisdiction over him. The court denied the application and dismissed the petition. The employee thereupon appealed to the Supreme Court of the United States, and attempted to sustain his appeal on the theory that he had been deprived of his liberty without due process of law. The Supreme Court dismissed his appeal, saying (the Chief Justice delivering the opinion):—

> Nor can the attempt be successfully made to bring the case within the class of cases in which the construction or application of the Constitution is involved in the sense of the statute on the contention that the petitioner was deprived of his liberty without due process of law. The petitioner does not proceed on any such theory, but entirely on the ground of want of jurisdiction in the prior case over the subject matter and over the person of petitioner in respect of inquiry into which the jurisdiction of the Circuit Court was sought. If, in the

opinion of that court, the restraining order had been absolutely void or the petitioner were not bound by it, he would have been discharged, not because he would otherwise be deprived of due process, but because of the invalidity of the proceedings for want of jurisdiction. The opinion of the Circuit Court was that jurisdiction in the prior suit and proceedings existed, and the discharge was refused, but an appeal from that judgment directly to this court would not, therefore, be on the ground that the application of the Constitution was involved as a consequence of an alleged erroneous determination of the questions actually put in issue by the petitioner.

In the case of—

Treat Mfg. Co. *vs.* Standard Steel & Iron Co., 157 U. S., 674 (1895),

the action was at common law, and the court below directed a verdict for defendant. An appeal was taken directly to the Supreme Court of the United States, but this appeal was, on motion, dismissed, the court (the Chief Justice delivering the opinion) saying:—

This was an action of trespass on the case. At the conclusion of the trial the defendants moved the court to charge the jury to find the issues for defendants, which motion was granted, and the jury was directed upon the whole case to return a verdict for defendants, plaintiff duly excepting. Thereupon the jury returned a verdict accordingly; plaintiff moved for a new trial, which was denied, and judgment was given against plaintiff on the verdict. This judgment was rendered December 3d, 1890. The writ of error from this court was brought November 24th, 1891. The only ground relied on to sustain the jurisdiction of this court is that the case "involves the construction "or application of the Constitution of the United States," because plaintiff in error was deprived of the right of trial by jury. But it is well settled that where the trial judge is satisfied upon the evidence that the plaintiff is not entitled to recover, and that a verdict, if rendered for plaintiff, must be set aside, the court may instruct the jury to find for the defendant. Grand Chute *vs.* Winegar, 15 Wall, 355; Marion County *vs.* Clark, 94 U. S., 278; Herbert *vs.* Butler, 97 U. S., 319. *If the court errs as matter of law in so doing the remedy lies in a review in the appropriate court.*

In the case of—

Iowa Central Ry. Co. *vs.* State of Iowa, 160 U. S., 389 (1896),

the Attorney-General of the State of Iowa filed a petition in the Supreme Court of Iowa praying for a mandatory order on the Iowa Central Railway Company to operate a certain portion of its road in compliance with a decree made against another corporation. The Iowa Central Railway Company filed an answer denying that it was a party to the suit in which the decree had been made, and that it was liable to perform the decree. The railway company also filed a demand for a jury trial. The court granted the mandatory order, whereupon the railway company took a writ of error to the Supreme Court of the United States on the ground that the summary proceedings against it were in violation of rights guaranteed by the Constitution of the United States. The Supreme Court of the United States dismissed the writ of error for want of jurisdiction, saying (Mr. Justice White delivering the opinion):—

> It is manifest that it was never contemplated by the framers of the Constitution that this court should sit in review, as an appellate court, of such a question as that presented by the record in the case at bar, viz., whether or not the highest court of a State erred in holding that it could rightfully determine, from the statements in the pleadings filed by both parties to a controversy pending before it, that the averments of an answer set forth no defense to the claim of the plaintiff.
>
> It was not a denial of a right protected by the Constitution of the United States to refuse a jury trial, even though it were clearly erroneous to construe the laws of the State as justifying the refusal. Brooks *vs.* Missouri, 124 U. S., 394; 8 Sup. Ct., 443; *Ex parte* Spies, 123 U. S., 131, 166.

In the case of—

Smith *vs.* McKay, 161 U. S., 355 (1896),

a bill in equity was filed in the Circuit Court of the United States for the District of Massachusetts. Respondents filed an answer averring that complainant, so far as he had any just cause of action, had a plain, adequate and complete remedy at law, and moved on this ground to dismiss the bill. This motion was denied, and the cause proceeded to a final decree in favor of complainant. Respondent thereupon took an appeal directly to the Su-

preme Court of the United States. The latter court dismissed the appeal, saying (Mr. Justice Shiras delivering the opinion):—

It is further contended by the appellee that this appeal should be dismissed because there is no right of appeal to this court in such a case as the present one.

The appellants claim that this appeal is within the first class under section 5 of the Judiciary Act of March 3d, 1891, providing that "in "any case in which the question of the jurisdiction of the court is in "issue, in such case the question of jurisdiction alone shall be certified "to the Supreme Court from the court below for decision."

The position of the appellee is that only questions of Federal jurisdiction can be brought directly here; that, if the Circuit Court has jurisdiction of the parties and of the matters in dispute, the fact that it is contended that it has no jurisdiction on its equity side raises no question of jurisdiction, within the meaning of the Act under which this appeal is taken; and that whether a case has been made out by the plaintiff in equity or at law is not a question that puts in issue the jurisdiction of the court, in the sense in which that phrase is used in the Judiciary Act. The question thus raised has never been directly decided by this court. It did present itself in the case of World's Columbian Exposition Case, 18 U. S. App., 42; 6 C. C. A., 58; 56 Fed., 654. That was a case in which the Circuit Court of the United States for the Northern District of Illinois had granted, at the suit of the United States, an injunction against the World's Columbian Exposition, a corporation of the State of Illinois, restraining the defendant from opening the exposition grounds or buildings to the public on Sunday. From this decree an appeal was taken to the Circuit Court of Appeals for the Seventh Circuit, and that court, speaking through Chief Justice Fuller presiding, stated and disposed of the question as follows:—

"The appellees have submitted a motion to dismiss the appeal upon "the grounds that the jurisdiction of the Circuit Court was in issue; "that the case involved the construction or application of the Consti- "tution of the United States; that the constitutionality of laws of the "United States was drawn in question therein; that therefore the ap- "peal from a final decree would lie to the Supreme Court of the United "States, and not to this court; and hence that this appeal, which is "from an interlocutory order, cannot be maintained under the seventh "section of the Judiciary Act of March 3d, 1891.

"We do not understand that the power of the Circuit Court to hear "and determine the cause was denied, but that the appellants con- "tended that the United States had not, by their bill, made a case prop- "erly cognizable in a court of equity. The objection was the want of "equity, and not the want of power. The jurisdiction of the Circuit

"Court was therefore not in issue, within the intent and meaning of "the Act."

We regard this as a sound exposition of the law, and, applied to the case now in hand, it demands a dismissal of the appeal on the ground that the objection was not to the want of power in the Circuit Court to entertain the suit, but to the want of equity in the complainant's bill. The appellants' contention in this respect would require us to entertain an appeal from the Circuit Court in every case in equity in which the defendant should choose to file a demurrer to the bill on the ground that there was a remedy at law.

When the requisite citizenship of the parties appears, and the subject matter is such that the Circuit Court is competent to deal with it, the jurisdiction of that court attaches; and whether the court should sustain the complainant's prayer for equitable relief, or should dismiss the bill with leave to bring an action at law, either would be a valid exercise of jurisdiction. If any error were committed in the exercise of such jurisdiction, it could only be remedied by an appeal to the Circuit Court of Appeals.

The learned counsel for the appellants claims in his brief that the case of Mississippi Mills *vs.* Cohn, 150 U. S., 202, sustains his present contention.

That was an appeal from the Circuit Court of the United States for the Western District of Louisiana, under the provisions of the Act of February 25th, 1889 (25 Stat., 693, ch. 36). The court below dismissed the complainant's bill in equity on the ground that no relief could be had in equity because, under the practice prescribed by a State law, there was a remedy by an action at law. But this court held that the jurisdiction of Federal courts, sitting as courts of equity, cannot be enlarged or diminished by State legislation, and that hence the Circuit Court had committed error by allowing a State law to overturn the well-settled practice in the Federal court. In the condition of the Federal statutes at that time there was no Circuit Court of Appeals, and the plaintiff's remedy, given him by the Act of February 25th, 1889, was by appeal to this court. Should such a state of facts again arise, the remedy would now be by appeal to the Circuit Court of Appeals.

Applying the principles laid down in these cases to the present case, the conclusion is inevitable that the appeal should be dismissed. The decree below sustaining the cross bill was not based on the decision of any constitutional question, but on the decision of the question whether under the well-settled principles of equity jurisprudence the respondent was entitled to equitable relief under the cross bill. If the court below erred in the de-

cision of that question, the remedy under the Act of March 3d, 1891, was by appeal to the Circuit Court of Appeals, and not to the Supreme Court of the United States.

As to the second question:—

WHETHER IN A CASE IN WHICH THE CHARTER OF A CORPORATION HAD BEEN EXTENDED BY STATUTE, AND THE COURT SUBSEQUENTLY, IN VALUING A CONTRACT MADE BY THAT CORPORATION CONTAINING A PROVISION THAT THE CONTRACT SHOULD CONTINUE DURING INCORPORATION, INTERPRETED THE CONTRACT AS MEANING THAT IT WAS TO CONTINUE DURING BOTH THE ORIGINAL TERM AND ANY EXTENSION, THIS INVOLVED ANY DECISION AS TO WHETHER THE STATUTE IMPAIRED THE OBLIGATION OF A CONTRACT.

This question does not require much argument. The charter of the Central Transportation Company was originally for twenty years, and would have expired in 1882. In 1870 the Pennsylvania Legislature by a statute (printed in the Record, page 532, folio 973) extended the charter for ninety-nine years. The statute did not in any way refer to existing contracts or attempt to extend them. No question as to the validity or constitutionality of this statute has ever been raised or decided. In the course of the present suit it became necessary to ascertain the value of the original Central Transportation Company's plant, which at the time of the Pullman lease included various railroad contracts. Some of these contracts were limited to continue "during the continuance of the incorporation" of the Central Transportation Company (Record, page 1144, folio 1944), and in considering their value as a part of the plant the question incidentally arose whether the legal construction of their language was that they were to continue during the corporate life of the Central Transportation Company, or only until the expiration of the period originally named in its charter. The question never was raised by the parties to the contracts, and was only

raised in this suit upon the question of the value of the plant. The Master decided that the contracts were to be construed as continuing during the corporate life of the Central Transportation Company, and his report was confirmed by the court. Pullman's Palace Car Company, in order to obtain an appeal to this court, now contend that the effect of the statute in connection with the decision of the Master as to the meaning of the contract was to extend the terms of the original contract, and that therefore the statute impaired the obligation of the contract and was unconstitutional. The statement of this proposition is its best refutation. No question as to the validity of the statute was raised. It did not purport to affect the contracts in any way. The question raised was as to the meaning of the parties to the contracts as interpreted by the language used. This was not a constitutional question and could not justify an appeal to the Supreme Court of the United States.

It is submitted that the record does not present any Federal question which justified an appeal to the Supreme Court of the United States and that the appellee's motion to dismiss this appeal already filed in the cause should be granted.

Was the second appeal, which was taken to the United States Circuit Court of Appeals subsequent to and pending an appeal to the Supreme Court of the United States, valid?

The general principle which seems to be thoroughly well established, without dissent, is that two proceedings cannot be taken at the same time by the same party to review a judgment. The law is thus stated in

Elliott on Appellate Procedure, section 528, page 450:—

Upon the general principle illustrated in the many cases which hold that a party cannot prosecute a suit to review a judgment and an

appeal to reverse it at the same time, it must be held that a party cannot prosecute two appeals in the same case and against the same judgment. The prosecution of the second appeal will not be permitted, but an order dismissing it will be granted on motion.

The same principle is laid down in the following cases:—

Young *vs.* Groner, 22 Wis., 205;
Schweickhart *vs.* Stuewe, 75 Wis., 157;
Buscher *vs.* Knapp, 107 Ind., 340;
Harvey *vs.* Fink, 111 Ind., 249;
Masonic Temple *vs.* Commonwealth, 12 S. W., 143 (Kentucky Appeals);
Kirk *vs.* Reynolds, 12 Cal., 99;
Brill *vs.* Meek, 20 Mo., 358;

As was well said by the court in

Rosenberger *vs.* Jones, 48 Missouri Appeals, 608, in which a second appeal was taken to the Court of Appeals after an appeal had been taken directly to the Supreme Court:—

If this court should reverse the judgment of the Circuit Court on this motion, its order, if it could have any legal effect, would oust the jurisdiction of the Supreme Court of an appeal pending before it. The very statement of this proposition shows that we have no jurisdiction.

After the passage of the Act of March 3d, 1891 (26 Statute, 826), an attempt was made to have that Act construed so as to allow two appeals by the same party; one to the Supreme Court on the question of jurisdiction, and the other to the Circuit Court of Appeals on the other questions; but the Supreme Court repudiated any such construction, and in the case of

McLish *vs.* Roff, 141 U. S., 661–665,

said:—

From the very foundation of our judicial system the object and policy of the Acts of Congress in relation to appeals and writs of error (with the single exception of a provision in the Act of 1875 in relation to cases of removal, which was repealed by the Act of 1887) have been to save the expense and delays of repeated appeals in the same suit, and to have the whole case and every matter in controversy in it de-

cided in a single appeal. Forgay *vs.* Conrad, 6 Howard, 201-204. The construction contended for would render the Act under consideration inconsistent with this long-established object and policy. More than this, it would defeat the very object for which that Act was passed. * * * It is further argued, in support of the contention of the plaintiff in error, that if it should be held that a writ of error would not lie upon the question of jurisdiction until after a final judgment, such ruling would lead to confusion and absurd consequences, and the question of jurisdiction would be certified to this court, while the case on its merits would be certified to the Circuit Court of Appeals; that the case would be before two separate appellate courts at one and the same time; and that the Supreme Court might dismiss the suit upon the question of jurisdiction while the Circuit Court of Appeals might properly affirm the judgment of the lower court upon the merits. The fallacy which underlies this argument is the assumption that the Act of 1891 contemplates several separate appeals in the same case and at the same time to two appellate courts. No such provision can be found in the Act, either in express terms or by implication. The true purpose of the Act, as gathered from its context, is that the writ of error or the appeal may be taken only after final judgment, except in the cases specified in section 7 of the Act. When that judgment is rendered, the party against whom it is rendered must elect whether he will take his writ of error or appeal to the Supreme Court upon the question of jurisdiction alone or to the Circuit Court of Appeals upon the whole case; if the latter, then the Circuit Court of Appeals may, if it deem proper, certify the question of jurisdiction to this court.

In the subsequent case of

Maynard *vs.* Hecht, 151 U. S., 324–326,

the Supreme Court again said:—

The Act of 1891 was framed in this regard in view of the former Act, and section 5 restricts the power of this court in all suits in which its appellate jurisdiction is invoked by reason of the existence of a question involving the jurisdiction of the Circuit Court over the case, to the review of that question only. The Act did not contemplate several appeals in the same suit at the same time, but gave to a party to a suit in the Circuit Court, where the question of the jurisdiction of the court over the parties or subject matter was raised and put in issue upon the record at the proper time and in the proper way, the right to a review by this court, after final judgment or decree against him, of the decision upon that question only, or by the Circuit Court of Appeals on the whole case.

It is true that in the case of

United States *vs.* Jahn, 155 U. S., 109,

the court held that where there was a decision by the Cir-

cuit Court sustaining the jurisdiction, and both parties wished to take appeals, the defendant on the question of jurisdiction alone, and the plaintiff on the question of the amount of the judgment in his favor, there could be two appeals by the different parties to the different courts, inasmuch as the question raised by each appeal could not be considered on the other appeal; and in that case it was held that the Circuit Court might suspend consideration of the plaintiff's appeal until the question of jurisdiction had been decided by the Supreme Court; but in that case the court was careful to say (page 113):—

> The Act certainly did not contemplate two appeals or writs of error at the same time, by the same party, to two different courts.

The exact question involved in the present case was raised under precisely similar circumstances in the Supreme Court of Louisiana in

> Freiberg *vs.* Langfelder, 45 La. Ann., page 983 (13 Southern Reporter, 404).

In that State there is a Circuit Court of Appeals and also a Supreme Court. In order to relieve what it considered a case of hardship, the Supreme Court had held that in case of uncertainty as to which court had jurisdiction cotemporaneous appeals might be taken to both courts, and where the appeal to one court had been dismissed before the appeal to the other had been reached it would sustain the other appeal. As usual, however, where a court departs from sound principles to relieve the hardship of a particular case the court found itself involved in the next case in some difficulty. A case had been decided by the lower court and two appeals had been taken, one to the Circuit Court of Appeals and one to the Supreme Court. They were made returnable at different times, and the one to the Circuit Court was duly lodged in that court and made returnable before the other appeal was lodged and made returnable in the Supreme Court. The appeal to the Supreme Court was thus brought to it while the appeal to the Circuit Court was pending and undetermined. The court dismissed the second appeal, and upon a rehearing refused to depart from its ruling.

The whole text of the opinion is as follows:—

FENNER, J.—The several plaintiffs in these cases having encountered adverse judgments in the court below, and being, as we suppose, in doubt as to whether the cases were within the appellate jurisdiction of the Circuit Court of Appeals or of this court, applied for and obtained at the same time two orders of appeal, one to the Circuit Court, returnable on the first Monday of June, 1893, and the other to this court on the second Monday of June, 1893. A motion to dismiss, filed by appellee, brings to our notice the fact (admitted by appellants) that the first appeal was duly lodged in the Circuit Court, and was pending in said court undetermined at the time when the appeal was filed in this court, and still remains undetermined. In consideration of the double appellate jurisdiction granted to the Supreme and Circuit Courts over District Courts, and of the uncertainty which sometimes attends the determination as to which is the proper appellate tribunal, we are disposed to recognize the practice which seems to prevail in ambiguous cases of taking at the same time orders of appeal to both appellate courts. In the case of Bennett *vs.* Creditors, 13 South Rep., 402 (decided at this term), where appeals had been taken both to the Circuit and to the Supreme Court, and where the appeal to the Circuit Court had been dismissed for want of jurisdiction before the appeal to this court had been filed here, we declined to dismiss the latter appeal, saying: "The first appeal prosecuted was a nullity, and the "second valid and legal. It was in force and could be prosecuted in "accordance with the order granting it. Because the other order, "obtained at the same time, was null and void, it could not affect the "order of appeal made returnable to this court." If this case stood in like position, we should pursue the same course. But the case before us is essentially different. We are confronted with the fact that the appeal taken to the Circuit Court was duly prosecuted, and had been lodged in that court before the appeal was returned in this court, and is still pending there undetermined. Is it possible that there can be two appeals, by the same party, from the same judgment, pending at the same time, in two different courts? We can discover no warrant of law for such a proposition. It may be that the appeal to the Circuit Court may be nugatory, as not within its jurisdiction, and that the Circuit Court may so decide and dismiss that appeal, as it did in the Bennett case. But the Circuit Court is vested with unquestioned and exclusive authority to determine primarily the question of its jurisdiction over the appeal. When it has decided, resort may be had to our supervisory jurisdiction to compel or forbid it to entertain jurisdiction, but we have universally declined to exercise our supervisory powers until the question of jurisdiction has been first submitted to and decided by the Circuit Court. For us to entertain jurisdiction of the appeal to this court would be, in effect, to order a dismissal of the appeal to the Circuit Court in advance of any deter-

mination by that court of its own jurisdiction. The two appellate jurisdictions are exclusive of each other. If this court has jurisdiction, the Circuit Court cannot have it—at least over the whole judgment; and both appeals are taken from the whole judgment without discrimination. Appellants have themselves invoked the appellate jurisdiction of the Circuit Court, and they must submit to that jurisdiction until it has been determined in proper proceedings and by proper authority that the Circuit Court has no jurisdiction. Then, and not till then, can they appeal to this court. We cannot, in this case, decide that the Circuit Court has no jurisdiction of an appeal regularly taken and pending before it, and it is impossible for us to entertain this appeal without so deciding. It is, no doubt, unfortunate for appellants that their two appeals thus find themselves in conflict; but it was a risk that they assumed when they took the two appeals that if the first appeal was not disposed of before the return day of the second, the latter would necessarily lapse. It is a legal impossibility that they should bring their second appeal to this court while the first appeal is still pending undetermined in the Circuit Court. It does not lie in the mouths of appellants to question the jurisdiction of the Circuit Court, which they have themselves invoked. Their adversaries may question it, and if they do so successfully appellants may then invoke the jurisdiction of this court; but so long as the appellees are held under the appeal in the Circuit Court, they cannot be impleaded in this court under an appeal by the same parties from the same judgment.

We have reflected on appellants' dilemma from every point of view without being able to discover any alternative except to dismiss the appeal. In doing so we shall reserve their right to take a new appeal to this court in case the Circuit Court shall be held to be without jurisdiction. It is therefore ordered that the appeal be dismissed without prejudice to appellants' right to take a new appeal to this court in case the pending appeal to the Circuit Court of Appeals shall be dismissed for want of jurisdiction.

ON REHEARING.

Counsel for appellants insist that in dismissing plaintiffs' appeal our opinion runs counter to the Constitution and laws, relying on Henry *vs.* Tricou, 36 La. Ann., 520, and supported by an elaborate and extended argument. We will premise these remarks by stating that the *dicta* announced in Henry *vs.* Tricou has been called to our attention for the first time in this application. It certainly is in conflict with our ruling in this case, but we feel bound to overrule that decision. It is couched in dogmatic terms and supported by thoughtful reasons, and has not been followed by confirmatory precedent. With the utmost desire to preserve uniformity in the rulings of this court, especially upon points of practice, a hasty departure from sound and

logical principles ought not to compel us, in the language of Chief Justice Black, "to stumble again every time we come to the place "where we stumbled before." We note the statement in the application to the effect that our opinion is slightly in error in saying "that "the appeal taken to the Circuit Court *had been lodged* (our italics) "in that court before the appeal was returned into this court," &c., counsel's insistence being that the record shows that orders of appeal were simultaneously granted and appeal bonds to this court and the Circuit Court simultaneously filed, thus vesting jurisdiction in each of said courts simultaneously. On this hypothesis counsel say: "Then it "necessarily follows that the appeal was lodged in the Supreme Court "at the same time and in the same manner that it was lodged in the "Circuit Court," &c. While the filing of the appeal bond certainly divests the jurisdiction of the court of first instance, and presumably, at least, vests the appellate court with jurisdiction, yet the appellate court is fully vested with the power of determining when an appeal is properly brought before it. No other court or tribunal is competent to do so, and in order to determine that question in this case we think we must examine and be controlled by the order of appeal. Looking into the order of appeal, we find that the Circuit Court appeal was made returnable on the first Monday of June, 1893, while the appeal taken to this court was made returnable to this court on the second Monday of June, 1893, just a week later. If the appellants pursued the tenor of this order of appeal and filed a transcript in each one of the appellate courts on the respective return days, it is evident that, as our opinion states, "the appeal taken to the Circuit Court had been "lodged in that court before the appeal was returned into this court." The clerk's indorsement on the transcript shows same to have been filed on June 13th, 1893, which was the second day of the present term, or eight days subsequent to the return day of the appeal in the Circuit Court. Appellee's motion to dismiss appeal was filed in this court June 14th, and the case was argued and submitted on that day. To this motion is appended the certificate of the clerk to the effect that the appeal had been prosecuted to the Circuit Court, and that the case had been argued and submitted in said court, and was at the time under advisement by the judges thereof. It is manifest that the statement of our opinion was strictly correct. In our opinion appellee's motion does not involve a question of jurisdiction, but the question of the appellants' right to bring up an appeal to this court during the pendency of another appeal in the Circuit Court. If this court should proceed with the case and decide it, we might be confronted with a different judgment rendered by the Circuit Court. True it is that the Circuit Court might, through courtesy, suspend its judgment so as to conform to our own, but there is no assurance of that course being pursued, nor could this court expect the Circuit Court so to do. But this is an argument *ab inconvenienti*. The proposition of appellants' counsel involves the philosophical impossibility of two

bodies occupying the same place at the same time. There cannot be such a thing as a suit being in two courts at one and the same time. This the appellants have attempted to do, and we simply decline to take cognizance of the appeal they have lodged in this court, since their appeal in the same case was lodged in the Circuit Court. We have gone very far—possibly too far—in permitting such radically inconsistent pleading as the taking of two self-contradictory orders of appeal from the same judgment to two different courts at the same time. No express provision of law sanctions such a practice, and we have given it our approval only to relieve parties from the responsibility of deciding in advance doubtful questions of jurisdiction, and to relieve them from the unfortunate consequences resulting in case the order of appeal first returned and presented for action should be annulled for want of jurisdiction. In that case the second order of appeal would remain in force, and might be prosecuted without encountering any conflict of jurisdiction. But to claim that a party who has lodged and is actually prosecuting an appeal in the Circuit Court can afterwards, and while that appeal is still pending, return into this court another appeal identical in every respect, is to demand what we characterize as a "legal impossibility," and we cannot demonstrate this more completely than was done in our original opinion.

Rehearing refused.

It is manifest that these authorities lay down the true doctrine. If, after an appeal to one tribunal, another tribunal were to entertain a second appeal by the same party there would be anomaly of two courts, each entertaining the suit, each having a right to enter a decree, and each having a right to enforce its decree, even though the two decrees might be different. In the present case, if the Supreme Court has jurisdiction by reason of the alleged constitutional questions, its jurisdiction also extends over all the other questions in the case, and it must hear and decide them. (Chappell *vs.* The United States, 160 U. S., 499.) The Circuit Court of Appeals if it refused to dismiss the second appeal also had jurisdiction to decide the questions raised by it. No appeal would lie from the Circuit Court of Appeals, and the result might be two different judgments by courts of final resort. It has been suggested that the Circuit Court of Appeals could entertain the appeal, but could suspend argument or decision until the Supreme Court had heard the first appeal. The argument, however, that

the Circuit Court of Appeals has the discretion, as a matter of courtesy or convenience, to suspend the hearing of the appeal, involves, *ex necessitate*, the counter proposition that it has the discretion also to hear and determine the appeal, which would lead to the absurd and inadmissible results already pointed out. If, on the other hand, it is contended that the Circuit Court of Appeals has not the discretion to suspend the hearing of the appeal, but is obliged to do so, then the absurd result is reached that one party may appeal to a court of final jurisdiction which is bound to refuse to the other party the right of a final hearing and determination until some other court shall have decided another appeal. It would be a novel spectacle to see a court bound to entertain an appeal and yet bound to suspend all action upon the appeal until some other court had taken action, and it can readily be seen what an opportunity for oppression this would give to a party desirous of delay. By taking an appeal to the Supreme Court and then a subsequent appeal to the Circuit Court of Appeals he would prevent the appeal to the latter court from being heard at the time when it was entitled to a hearing, and would secure the additional delay required for the hearing and determination or dismissal of his appeal to the Supreme Court.

The appellant in this case does not even have the poor excuse of hardship for the novel practice which it thus seeks to establish. It had its option either to appeal to the Circuit Court of Appeals or to appeal to the Supreme Court under section fifth of the Act of March 3d, 1891, which provides:—

> Appeals or writs of error *may* be taken from the District Courts or from the existing Circuit Courts direct to the Supreme Court in the following cases * * * in any case that involves the construction or application of the Constitution of the United States.

The appellant took an appeal to the Supreme Court, which secured there a hearing of all the questions involved, provided those questions included a question arising under the Constitution of the United States; but it also ran the

risk that if those questions did not include a constitutional question, the Supreme Court must in the end dismiss the appeal without regard to the merits. On the other hand, appellant might have taken an appeal to the Circuit Court of Appeals, in which case it would have equally secured a hearing on all the questions involved, and could have had any constitutional questions certified by the Circuit Court of Appeals to the Supreme Court. In the case of an appeal to the Circuit Court of Appeals, appellant ran no risk of having its appeal dismissed without a hearing on the merits, as the Circuit Court of Appeals had in any event jurisdiction because of the questions involved other than constitutional questions. There were, therefore, two courses open to the appellant, one involving a risk of a dismissal without a hearing on the merits, the other involving no such risk. Appellant chose the former course, and it did this with its eyes open, as its application for a writ of error was opposed and argued. There was no hardship in putting appellant to its election between these two remedies, and no reason for giving it both. On the contrary, there was every reason, as was pointed out in McLish *vs.* Roff, 141 U. S., 661, already cited, for holding it to its election. The court was there dealing with a case involving a jurisdictional and not an alleged constitutional question, but the reasoning applies to both cases, and the parallel drawn by the court between the two classes of cases in the opinion shows that the court considered them to rest on the same foundation, that language being as follows:—

> But there is an additional reason why the omission of the word *final* in the fifth section of the Act should not be held to imply that the purpose of the Act is to extend the right of appeal to any question of jurisdiction in advance of the final judgment, at any time it may arise in the progress of the cause in the court below. Such implication, if tenable, cannot be restricted to questions of jurisdiction alone. It applies equally to cases that involve the construction or application of the Constitution of the United States, and to cases in which the constitutionality of any law of the United States, or the validity or construction of any treaty made under its authority is drawn in question, and to those in which the Constitution or law of a

State is claimed to be in contravention of the Constitution of the United States. Under such a construction all these most important classes of cases could be directly taken by writ of error or appeal, as the case may be, to this court, independently of any final judgment upon them. The effect of such a construction, if sanctioned, would subject this court to the needless delays and labor of several successive appeals in the same case, which, with all the matters in controversy in it, by awaiting the final judgment, could be promptly decided in one appeal.

It is submitted, therefore, that the appeal to the Circuit Court of Appeals was invalid, and that the motion of the appellee to dismiss it should have been granted. To hold otherwise would be to sustain in all future cases the power of a court to entertain (and *ex necessitate* the power to decide) an appeal during the pendency of a prior appeal by the same party on the same questions to another court. There is no necessity for such an anomalous ruling and no warrant for it either in principle or authority.

The learned justice who delivered the opinion in the Circuit Court of Appeals in this case, while admitting that the general rule is as contended for by appellee, was of opinion that the Act of 1891 allowed two appeals at the same time by the same party, one to the Supreme Court and one to the Circuit Court of Appeals. It is submitted, however, that there is nothing in the Act itself to suggest any such construction, and that to add such a provision to the Act is judicial legislation rather than construction.

If either appeal was valid was the decree appealed from erroneous?

This branch of the case will be discussed under three propositions, viz.:—

1. PULLMAN'S PALACE CAR COMPANY HAVING FILED A BILL ALLEGING, *inter alia*, THE INVALIDITY OF THE LEASE, PRAYING THE AID OF THE COURT TO DETERMINE WHAT PROPERTY COULD BE RETURNED, HOW IT SHOULD BE RETURNED AND WHAT COMPENSATION SHOULD BE MADE FOR PROPERTY NOT CAPABLE OF

RETURN, AND TENDERING SUCH EQUITABLE RELIEF OR COMPENSATION AS SHOULD BE FIXED BY THE COURT, AND HAVING OBTAINED UNDER THE BILL RELIEF AGAINST THE CENTRAL TRANSPORTATION COMPANY BY A DECREE OF INJUNCTION, COULD NOT AFTER SUCCESSFULLY ESTABLISHING THE INVALIDITY OF THE LEASE DISCONTINUE ITS OWN BILL AND PREVENT THE COURT FROM ENTERTAINING A CROSS BILL OR ADMINISTERING THE EQUITABLE RELIEF TENDERED.

2. THE TWO COMPANIES HAVING IN GOOD FAITH, AND UNDER THE ADVICE OF COMPETENT COUNSEL, EXECUTED A LEASE IN PURSUANCE OF A STATUTE DRAWN TO AUTHORIZE THE LEASE, AND WHICH BOTH PARTIES SUPPOSED DID AUTHORIZE IT, THE COMPANY IN POSSESSION OF THE PROPERTY IF IT SETS UP THE INVALIDITY OF THE LEASE MUST RESTORE, OR MAKE EQUITABLE COMPENSATION FOR, THE PROPERTY.

3. UNDER ALL THE EVIDENCE THE MEASURE OF COMPENSATION FIXED BY THE DECREE OF THE COURT BELOW WAS A MINIMUM ONE, AND TO QUOTE THE LANGUAGE OF THE CONCURRING OPINION OF JUDGE DALLAS, "QUITE AS FAVORABLE "TO THE PULLMAN COMPANY AS UPON ANY POSSIBLE VIEW OF "THE FACTS AND THE LAW COULD REASONABLY HAVE BEEN "REACHED."

These propositions will be considered separately.

1. PULLMAN'S PALACE CAR COMPANY HAVING FILED A BILL ALLEGING, *inter alia*, THE INVALIDITY OF THE LEASE, PRAYING THE AID OF THE COURT TO DETERMINE WHAT PROPERTY COULD BE RETURNED, HOW IT SHOULD BE RETURNED AND WHAT COMPENSATION SHOULD BE MADE FOR PROPERTY NOT CAPABLE OF RETURN, AND TENDERING SUCH EQUITABLE RELIEF OR COMPENSATION AS SHOULD BE FIXED BY THE COURT, AND HAVING OBTAINED UNDER THE BILL RELIEF AGAINST THE CENTRAL TRANSPORTATION COMPANY BY A DECREE OF INJUNCTION, COULD NOT AFTER SUCCESSFULLY ESTABLISHING THE INVALIDITY OF THE LEASE DISCONTINUE ITS BILL AND PREVENT THE COURT FROM ENTERTAINING A CROSS BILL OR ADMINISTERING THE EQUITABLE RELIEF TENDERED.

But little need be said in addition to the opinion of the court below on this point, found at page 552 of the record. Ordinarily, in equity as in law, a plaintiff will be allowed to discontinue his proceedings, and the mere fact that the defendant may thereby be put to the annoyance of a new suit for the same cause of action will not prevent the exercise of this right. There is, however, this distinction between actions in equity and actions at law. In equity the court sometimes gives relief by injunction or interlocutory decree prior to the final adjudication of the cause, and by such action the situation of the parties is changed. In equity also, in many cases, not alone is the plaintiff entitled to relief, but the defendant is entitled to affirmative relief against the plaintiff. It follows that in suits in equity it sometimes happens that to allow the plaintiff to dismiss his bill would be to inflict an injury on the defendant greater than the mere inconvenience of being subjected to a second suit. Such discontinuance, therefore, will not be allowed by the court where it would be prejudicial to the rights which the defendant has acquired in the progress of the cause. This rule is stated in the latest work on equity practice, viz.:—

Beach on Modern Equity Practice, 450, as follows:—

It is very clear from an examination of the authorities, English and American, that the right of a complainant to dismiss his bill without prejudice on payment of costs is of course, except in certain cases. These exceptions were broadly stated by Chancellor Harper, of South Carolina, in Bank *vs.* Rose, 1 Rich Eq., 294, as follows: "The ex-"ception, stated in general terms, is that it is within the discretion of "the court to refuse him permission to do so if a dismissal would work "a prejudice to the other parties; and I gather from the cases, com-"pared with each other, that it is not regarded as such prejudice to a "defendant that the complainant, dismissing his own bill, may at his "pleasure harass him by filing another bill for the same matter. But "whenever in the progress of a cause a defendant entitles himself to a "decree, either on the complainant or against a co-defendant, and "a dismissal would put him to the expense and trouble of bringing a "new suit and making his proofs anew, such dismissal will not be "permitted."

In the case of

Booth *vs.* Leycester, 1 Keen, 255,

before the Master of the Rolls (Lord Langdale), the English practice is thus stated:—

His Lordship had a strong impression at first that a plaintiff might dismiss his own cause upon payment of costs at any time; but upon inquiring into the practice he found the rule to be otherwise, and it was certainly quite reasonable that a plaintiff ought not to have the power of dismissing his bill when, by so doing, he might prejudice the defendant.

In the case of

Stevens *vs.* The Railroads, 4 Fed. Rep., 97 (1880), the United States Court for the Western District of Tennessee (Hammond, D. J., delivering the opinion), after an exhaustive review of the authorities, held that the case Booth *vs.* Leycester, already cited, correctly stated the practice in equity, and that the right to dismiss was not absolute, but must be denied where, under the circumstances of the case, it would work a prejudice to the defendant. The court in its opinion said:—

The case of Booth *vs.* Leycester is conclusive against the position that the right protected by this exception must arise out of some order or decree entered in the case. It may arise out of any proceeding in it, and may be found in the nature of the defense, the condition of the pleadings, the agreement of the parties, or any circumstances appearing of record in the case which show that it would be inequitable to allow the dismissal.

In the case of

Chicago, &c., R. R. Co. *vs.* Union Roll. Mill Co., 109 U. S., 702 (1884),

the question of the right of a plaintiff to dismiss a bill came before the Supreme Court of the United States, and the court (Mr. Justice Woods delivering the opinion) said:—

It may also be conceded that, as a general rule, a complainant in an original bill has the right at any time, upon payment of costs, to dismiss his bill. But this latter rule is subject to a distinct and well-settled exception, namely, that after a decree, whether final or interlocutory, has been made, by which the rights of a party defendant have

been adjudicated or such proceedings have been taken as entitle the defendant to a decree, the complainant will not be allowed to dismiss his bill without the consent of the defendant.

The rule is stated as follows in Daniell's Chancery Practice, page 793, fifth Am. Ed.:—

"After a decree or decretal order the court will not allow a plaintiff "to dismiss his own bill unless upon consent, for all parties are inter- "ested in a decree, and any party may take such steps as he may be "advised to have the effect of it."

The same writer, page 794, says that—

"After a decree has been made, of such a kind that other persons "besides the parties on record are interested in the prosecution of it, "neither the plaintiff nor defendant, on the consent of the other, can "obtain an order for the dismissal of the bill."

The rule, as we have stated it, is sustained by many adjudicated cases. It was laid down by the Lord Chancellor in *Cooper* vs. *Lewis*, 2 Phillips, Ch. 181, as follows:—

"The plaintiff is allowed to dismiss his bill on the assumption that it "leaves the defendant in the same position as he would have stood if "the suit had not been instituted; it is not so where there has been a "proceeding in the cause which has given the defendant a right against "the plaintiff."

In Bank *vs.* Rose, 1 Rich. Eq. (S. C.), 294, it was said:—

"But whenever, in the progress of a cause, the defendant entitles "himself to a decree, either against a complainant or a codefendant, "and the dismissal would put him to the expense and trouble of bring- "ing a new suit or making new proofs, such dismissal will not be "permitted."

So in the case of Connor *vs.* Drake, 1 Ohio St., 170, the Supreme Court of Ohio declared:—

"The propriety of permitting a complainant to dismiss his bill is a "matter within the sound discretion of the court, which discretion is "to be exercised with reference to the rights of both parties, as well "the defendant as the complainant. After a defendant has been put to "trouble in making his defense, if, in the progress of the case, rights "have been manifested that he is entitled to claim, and which are valu- "able to him, it would be unjust to deprive him of them merely be- "cause the complainant might come to the conclusion that it would be "for his interests to dismiss his bill. Such a mode of proceeding would "be trifling with the court as well as with the rights of defendants. We "think the court did not err in its ruling in refusing to permit com- "plainant to dismiss his bill."

Chancellor Walworth, in the case of *Wall* vs. *Crawford*, 11 Paige, 472, laid down the rule in these words:—

"Before any decree or decretal order has been made in a suit in "chancery, by which a defendant therein has acquired rights, the com- "plainant is at liberty to dismiss his bill upon payment of costs; but

"after a decree has been made by which a defendant has acquired "rights, either as against a complainant or against a codefendant in the "suit, the complainant's bill cannot be dismissed without destroying "those rights. The complainant in such a case cannot dismiss without "the consent of all parties interested in the decree, nor even with such "consent without a rehearing, or upon a special order to be made by "the court."

See also Guilbert *vs.* Hawles, 1 Ch. Cas., 40; Bluck *vs.* Colnaghi, 9 Sim. Ch., 411; Lashley *vs.* Hogg, 11 Ves. Jr., 602; Booth *vs.* Leycester, 1 Keen's Ch., 255; Biscoe *vs.* Brett, 2 Vesey & B., 377; Collins *vs.* Greaves, 5 Hare, 596; Gregory *vs.* Spencer, 11 Beav., 143; Carrington *vs.* Holly, 1 Dick, 280; Anon., 11 Ves. Jr., 169; Cozzens *vs.* Sisson, 5 R. I., 489; Opdyke *vs.* Doyle, 7 R. I., 461; The Atlas Bank *vs.* The Nahant Bank, 23 Pick., 491; Bethia *vs.* M'Kay, Cheve's Eq. (S. C.), 96; Sayer's Appeal, 79 Penn. St.; Seymour *vs.* Jerome, Walk. Mich. Ch., 356.

In the case of

Electrical, &c., Co. *vs.* Brush, &c., Co., 44 Fed. Rep., 602 (1890),

the court (Brown, J., delivering the opinion) said:—

While there is no doubt of the general proposition that a plaintiff in an equity suit may dismiss his bill at any time before the hearing, it is equally well settled that he cannot do so without an order of court; a practice which implies a certain discretion on the part of the court to refuse such order if, under the particular facts of the case, a dismissal would be prejudicial to the rights of the defendant.

After quoting the authorities, the court then added:—

Upon a full examination of all the cases upon this subject, we have come to the conclusion that leave to dismiss a bill should not be granted where, beyond the incidental annoyances of a second litigation upon the subject matter, such action would be manifestly prejudicial to the defendant.

This case was followed in

Hat-sweat, &c., Co. *vs.* Waring, 46 Fed. Rep., 87 (1891).

In the case of

W. U. Tel. Co. *vs.* Am. Bell Tel. Co., 50 Fed. Rep., 662 (1892),

the court (Colt, C. J., delivering the opinion) said:—

We have, therefore, this single proposition to decide—whether, under these circumstances, the complainants are entitled to dismiss their bill without prejudice, upon payment of costs, and this is a question purely of equity practice. It is admitted that, under equity rule 90, this court is governed by the equity practice of the High Court of Chancery of England as it existed in 1842, the time of the adoption of the rule. Under that practice the general rule was that a complainant might dismiss his bill upon payment of costs at any time before interlocutory or final decree, and this has been the general practice both in the Federal and State courts. There are, however, certain well-recognized exceptions to this rule, and the question which arises upon this motion is whether the defendant comes within any of these exceptions. These exceptions are based upon the principle that a complainant should not be permitted to dismiss his bill when such action would be prejudicial to the defendant. But this does not mean that it is within the discretion of the court to deny the complainant this privilege under any circumstances where it might think such dismissal would work a hardship to the defendant, as, for example, where it might burden him with the trouble and annoyance of defending against a second suit; but it means that if, during the progress of the case, the defendant has acquired some right, or if he seeks or has become entitled to affirmative relief, so that it would work an actual prejudice against him to have the case dismissed, then the complainant will not be permitted to dismiss his bill. To hold otherwise would be to do away with the general rule altogether, and to make the question simply one of discretion on the part of the court. Where issues are framed out of chancery and decided by a jury, that would be such a determination of the case as to forbid the complainant to dismiss his bill without prejudice, because the defendant has acquired a new right; and so where a Master has filed his report and his findings are against the complainant, I do not think for the same reason he should be allowed to dismiss his bill. Again, where the defendant has filed a cross bill or where he seeks affirmative relief in his answer, or where, without specifically asking for affirmative relief in his answer, the evidence discloses that he is entitled to such relief, these are instances where the complainant should not be allowed to dismiss his bill; but where there has been no interlocutory or final decree, and no determination of the cause in any way, and the defendant seeks no affirmative relief, or, in other words, where the bringing of another suit will merely submit him to the annoyance of a second litigation, the complainant has a right to dismiss his bill without prejudice upon payment of costs.

In the case last cited the court, while correctly stating the principles governing this class of cases, failed to carry these principles to their logical conclusion, and allowed

complainant to dismiss its bill after a reference to a Master. Upon appeal the Circuit Court of Appeals reversed the judgment and held that the complainant could not dismiss the bill, saying:—

> The single question contested is the right of the complainants thus to dismiss their bill. To the discussion of this question great learning and extensive examination of the authorities have been devoted; but in the opinion of this court the question lies in narrow compass. All the authorities recognize that in the progress of a suit a stage may be reached when the right of the complainant to end the cause by dismissing his bill ceases. With sufficient exactness, the decisive point may be said to be when the cause has proceeded so far as to give the defendant rights of which he would be deprived by allowing the dismissal of the bill by the complainant on his motion. Such rights were acquired in this cause by the reference of the parties to the Master, approved and confirmed by the decretal order of the court.

American Bell Telephone Co. *vs.* Western Union Telegraph Co., 69 Fed. Rep., 666 (1895).

Application was subsequently made to the Supreme Court of the United States for a *certiorari* in this case, which application was refused.

American Bell Telephone Co. *vs.* Western Union Telegraph Co., 166 U. S., 721.

In the case of

Hershberger *vs.* Blewett, 55 Fed. Rep., 170 (1892), the court (Hanford, D. J.) said:—

> The authorities cited do not sustain the solicitor for plaintiffs in maintaining that in equity a plaintiff may dismiss without prejudice, and without consent of the defendant, at any stage of the case, upon payment of costs. In section 291 of Foster's Federal Practice, the learned author says:—
>
> "After appearance, and before a decree or decretal order, a plaintiff "can usually obtain a dismissal upon payment of the costs of such of "the defendants as have appeared, but not if they, or any of them, "would be injured thereby. * * * After a decree or decretal order, "however, the plaintiff may not discontinue without the consent of all "parties who have acquired rights by the decree."

In the case of

Detroit *vs.* Detroit City Ry. Co., 55 Fed. Rep., 569 (1893),

the court (Taft, C. J., delivering the opinion), in refusing a motion to dismiss, said:—

> It is very clear from an examination of the authorities, English and American, that the right of a complainant to dismiss his bill without prejudice, on payment of costs, was of course except in certain cases. Chicago, &c., A. R. Co. *vs.* Union Rolling Mill Co., 109 U. S., 702. The exception was where a dismissal of the bill would prejudice the defendants in some other way than by the mere prospect of being harassed and vexed by future litigation of the same kind.

Applying the principles laid down by the above authorities to the present case, it is quite clear that the order of the court refusing permission to dismiss, and allowing the defendant to file a cross bill, was eminently proper. The bill was one which tendered relief to the defendant. It denied the right of the defendant in the bill to proceed at law against the plaintiff, and in lieu thereof tendered it affirmative relief in equity. Upon the tender of such relief, and the prayer to the court to administer it, the plaintiff obtained from the court an injunction restraining the defendant from certain legal proceedings. One of the grounds on which the plaintiff obtained the injunction and tendered affirmative relief to the defendant, was that the original contract was invalid and could not be carried out. After obtaining the injunction, and after over four hundred printed pages of testimony had been taken in the cause, the plaintiff now seeks to dismiss his bill, deprive defendant of the benefit of that testimony, and deprive defendant of the affirmative relief to which it is entitled. To do this would be to greatly prejudice the defendant's right. The loss which the defendant would suffer would not be simply the inconvenience of being subjected to the possibility of another suit, but would be the deprivation of a right to which it is entitled in this suit, namely, a decree for affirmative relief based partly on testimony already taken. The equity of the defendant is so strong,

and the action which the plaintiff seeks to take is so inequitable, that the language of the Supreme Court in the case of Chicago, &c., R. R. Co. *vs.* Union Rolling Mill Co., 109 U. S., 702–716, is directly applicable:—

> If the court under these circumstances had allowed the original bill to be dismissed without the consent of the Rolling Mill Company, it would have inflicted a palpable wrong on that company and trifled with the administration of justice.

It has been urged on behalf of Pullman's Palace Car Company as a reason why the court should have allowed it to dismiss its own bill, and should have refused to allow the cross bill to be filed, that the claim of the Central Transportation Company was a money claim for which there was a remedy at law both adequate and appropriate. To this there are two answers: First, that it was too late for the Pullman Company to deny the jurisdiction of equity; and, second, that the claim was one in which a court of equity certainly had concurrent and probably had exclusive jurisdiction.

Wherever a court of equity has with the acquiescence of the parties once taken jurisdiction for the purpose of administering relief, it looks with disfavor upon any objections by either party to its jurisdiction, and unless the case is entirely outside the scope of equity jurisdiction, it will not allow either party to object to the tribunal whose decision such party has invoked or acquiesced in. This is the law both in England and America.

In the case of

Duke of Leeds *vs.* The Corporation of New Radnor, 2d Brown's Chanc. Reps., 402,

Lord Chancellor Thurlow, in reversing a decree of the Master of the Rolls refusing jurisdiction, said:—

> In this case the decree is not tenable, because the defendants have by their answer admitted the plaintiff's right, and the court, by retaining the bill for a year, has admitted that the relief lies in equity. To send it to law, only to try whether there is a remedy there, would not be that measure of justice which the court ought to give; therefore the account must proceed.

In the case of

Kilbourn *vs.* Sunderland, 130 U. S., 505,

the Supreme Court of the United States (Mr. Chief Justice Fuller delivering the opinion) said:—

The point is also pressed that the remedy at law was plain, adequate and complete, and jurisdiction in equity therefore wanting. We do not understand counsel to repudiate the stipulation or to suggest multifariousness or any objection arising upon the rather unusual mode pursued to secure a conclusion in four cases rolled into one, but to contend that the determination of all the matters in issue belongs on the law side of the court. The defendants fully answered the bill, and raised no such objection, and, the cause being at issue, and evidence taken, it was ordered on the 23d of February, 1883, by consent, to be heard by the general term in the first instance. On the 24th of March, 1884, the defendant moved to dismiss on the ground of the adequacy of the remedy at law.

We have had occasion recently to remark that where it is competent for the court to grant the relief sought, and it has jurisdiction of the subject matter, this objection should be taken at the earliest opportunity and before the defendants enter upon a full defense. Reynes *vs.* Dumont, *ante*, 354. By stipulation several suits had in effect been consolidated with the intention, by consent, of adjusting the conflicting claims between Sunderland and Hillyer jointly and Sunderland alone, and Kilbourn, Latta and Olmstead, and Latta alone, and the parties had proceeded in their pleadings upon that theory, and taken all the evidence, and had the cause set down for hearing. It is then suggested that Sunderland and Hillyer and Sunderland cannot maintain their suit in equity, but must be remitted to actions at law. We do not agree with this view.

The jurisdiction in equity attaches unless the legal remedy, both in respect to the final relief and the mode of obtaining it, is as efficient as the remedy which equity would confer under the same circumstances. The parties stood in a fiduciary relation towards each other, and, in the course of the transactions between them, from thirty to forty different lots of ground were bought for the complainants in upwards of fifteen distinct purchases. As to five of these purchases fraud is specifically charged. A considerable amount of complainants' money was in defendants' hands, and a counter claim was set up by them in relation to services performed in and about the care of a portion of the property purchased; services covering many payments for taxes, interest, &c.; making of loans and procuring renewals; receipts and advances. The transactions were all parts of one general enterprise, and the claims of a character involving trust relations. Before the severance of the connections between the parties, Kilbourn and Latta dissolved, and the amounts due from Kilbourn

and Latta, if any, and from Latta alone, if any, to Sunderland and Hillyer or to Sunderland, and the offsets and counter claims of Kilbourn and Latta or of Latta, all sprang from one series of operations, and required an accounting on both sides, and that accounting, until disentangled by the investigation of the court, was apparently complicated and difficult. "There cannot be any real doubt that the "remedy in equity, in cases of account, is generally more complete "and adequate than it is or can be at law."

In the case of

Brown *vs.* Lake Superior Iron Co., 134 U. S., 530, the Supreme Court of the United States (Mr. Justice Brewer delivering the opinion) said:—

But the maxim, "He who seeks equity must do equity," is as appropriate to the conduct of the defendant as to that of the complainant; and it would be strange if a debtor, to destroy equality and accomplish partiality, could ignore its long acquiescence and plead an unsubstantial technicality to overthrow protracted, extensive and costly proceedings carried on in reliance upon its consent. Surely no such imperfection attends the administration of a court of equity. Good faith and early assertion of rights are as essential on the part of the defendant as of the complainant. This matter has recently been before this court in Reynes *vs.* Dumont, 130 U. S., 354, 395, and was carefully considered, and the rule, with its limitations, thus stated: "The rule as stated in 1 Daniell's Chancery Practice, 555, "4th Am. ed., is that if the objection of want of jurisdiction in equity "is not taken in proper time, namely, before the defendant enters into "his defense at large, the court, having the general jurisdiction, will "exercise it; and in a note on page 550, many cases are cited to estab- "lish that 'if a defendant in a suit in equity answers and submits to " 'the jurisdiction of the court, it is too late for him to object that " 'the plaintiff has a plain and adequate remedy at law. This ob- " 'jection should be taken at the earliest opportunity. The above rule " 'must be taken with the qualification that it is competent for the " 'court to grant the relief sought, and that it has jurisdiction of the " 'subject matter.'

In the case of

Perego *vs.* Dodge, 163 U. S., 160,

under a bill filed by complainant to which the defendant answered asking for affirmative relief, the court entered a decree for the defendant, giving such affirmative relief, and the complainant thereupon took the ground that the court ought not to have granted the relief because there

was an adequate remedy at law. The Supreme Court of the United States (Mr. Chief Justice Fuller delivering the opinion) said:—

> We are of opinion that it was competent for the district court to grant the relief sought, and that it had jurisdiction of the subject matter. Plaintiff, having voluntarily invoked the equity jurisdiction of the court, was not in a position to urge, on appeal, that his complaint should have been dismissed because of adequacy of remedy at law.

Even, therefore, if the jurisdiction of the court in the present case was not clear, it would not be in the mouth of the plaintiff who had invoked that jurisdiction and obtained relief under it, to now deny it.

The jurisdiction of the court, however, is not doubtful. The claim of the Central Transportation Company was not in its inception a mere money demand. On the contrary, as was alleged by the Pullman Company in its bill, the Central Transportation Company was the owner of property which had been delivered under a void lease, and which the Pullman Company professed itself willing to return as far as practicable. The Pullman Company in its bill alleged that part of the property existed in specie, part was in a converted form, and part could not be returned at all. It alleged that it was willing to return the property that was in specie, to do what was equitable with that which was in a converted form, and to make compensation for what could not be returned; but that the aid of a court of equity was necessary to determine what would be restitution or compensation. It prayed:—

> That this court will lend its aid to your orator in making the surrender of demised property to the defendant and relieve your orator from the embarrassments set forth in this bill; and that the court will declare by its decree the rights of the defendants, if any, in the said contract with the Pennsylvania Railroad Company, and make such disposition thereof as may be equitable; and that it may be held that your orator is not bound or holden to more than just compensation to the defendant for such of the demised property as cannot be actually restored or in literal compliance with the terms of said lease;
>
> and
>
> that the court may consider and decree whether said contract of lease was not made without authority of law on the part of the defendant,

and in excess of its corporate powers and in violation of its corporate duties, so as not to be enforceable against your orator beyond the obligation of your orator to make return of or just compensation for the property demised; and that an account may be taken between your orator and the defendant, and that the amount may be ascertained that should be paid by your orator to the defendant on any account whatever;

and that the court might

direct and adjudge as to how said surrender shall be made and carried out, or what compensation shall be made in lieu of surrender where surrender has become impracticable or impossible as in this bill set forth; and that an accounting may be had between your orator and defendant as to all the matters and things set out in this bill.

(Record, page 22.)

Under these circumstances, how could the Central Transportation Company have sued at law? It could not have sued on an *indebitatus assumpsit*, since the Pullman Company was merely bailee of property. It could not sue for conversion or use, since the Pullman Company alleged its willingness to return the property and asked a court of equity to aid it in making such return. It subsequently turned out indeed, from the evidence, that the plant of the Central Transportation Company had been so thoroughly absorbed by the Pullman Company that no property existed in its original form, and that no relief was possible but the giving of a money decree as compensation; but this, at the time when the Pullman Company repudiated the lease, could not have been foretold, and was the result of an investigation into the accounts of the two companies, only possible in a court of equity. It would be surprising if a complainant, professing his willingness to make equitable restitution or compensation and invoking the aid of a court of equity to investigate and determine how he could make it, should be allowed afterwards to object to the jurisdiction of the court because as a result of the accounting it was found impracticable to give other than pecuniary relief.

It is submitted, therefore, that irrespective of any technical questions as to whether complainant could or could

not dismiss the original bill, and as to whether the cross bill was to be considered as a cross bill or an original bill, the Central Transportation Company is entitled to relief because under the facts set up by complainant in its original bill, only a court of equity could do justice between the parties; and when the complainant had established the fact that the lease was illegal and void, the defendant was entitled to have the court of equity administer the relief tendered.

THE TWO COMPANIES HAVING IN GOOD FAITH, AND UNDER THE ADVICE OF COMPETENT COUNSEL, EXECUTED A LEASE IN PURSUANCE OF A STATUTE DRAWN TO AUTHORIZE THE LEASE, AND WHICH BOTH PARTIES SUPPOSED DID AUTHORIZE IT, THE COMPANY IN POSSESSION OF THE PROPERTY, IF IT SETS UP THE INVALIDITY OF THE LEASE, MUST RESTORE, OR MAKE EQUITABLE COMPENSATION FOR, THE PROPERTY.

The facts of the case are that the Central Transportation Company and Pullman's Palace Car Company, two corporations about equal in size, and having properties of about equal value, desired to consolidate, and after consultation the best method of uniting the businesses was believed to be by the lease of one to the other. Eminent counsel was employed, who drafted an Act of Assembly for the purpose of authorizing the lease. That Act was passed, and both parties for fifteen years carried out the lease in good faith, believing it to be valid. In the meanwhile the property of the Central Transportation Company, consisting of cars, equipment and contracts, cover an extensive system of sleeping-car transportation, was so incorporated in the business of Pullman's Palace Car Company, by substitution of cars, renewal or substitution of contracts and general merger of lines and business, that it was impossible to separate the two. The united business had been exceedingly prosperous, and the united plant, consisting of the two systems consolidated, was more valuable than ever. After the fifteen years of amicable relations the parties quarreled over the lease. The Central

Transportation Company brought suits at law under the lease, and Pullman's Palace Car Company filed the present bill in equity, alleging, *inter alia*, that the lease itself was *ultra vires* and void, and asked the court to enjoin the proceedings at law, take an account of the property, and ascertain what would be just compensation for such property as could not be returned. In order that the court may see that this allegation and prayer for relief was a substantial part of the bill it is here reprinted, as follows:—

And your orator shows that in said lease it is recited that the said contract of lease is made on the part of the defendant, the said Central Transportation Company, under an Act of the General Assembly of the Commonwealth of Pennsylvania therein named, approved the ninth day of February, A. D. 1870, a copy whereof is hereto attached, marked "Exhibit G," and referred to as a part of this bill; but your orator is advised, and therefore submits it to the court, that the said lease, being a grant, assignment and transfer of all the property, contracts and rights of the said defendant, the Central Transportation Company, and including a covenant on the part of said defendant corporation not to transact, during the existence of said lease, any of the business for the transaction of which it was incorporated, was never legally valid between the parties thereto, but was void for the want of authority and corporate power on the part of defendant to make the said contract of lease, and because the same was in violation of the charter conferring the corporate powers of said defendant, and of the purpose of its incorporation, as by the said charter, to which, for greater certainty, reference is made, your orator is advised it will appear; that the said contract of lease was never susceptible of being enforced in law by your orator against said defendant, and cannot, therefore, be construed and held to continue in force and obligatory upon your orator; and that your orator can be under no other legal obligation or equitable duty to the defendant than to return such of the property assumed to be demised as is capable of being returned, and to make just compensation for such other of the said property as, under the said contract of lease, it ought to make compensation for, which it is willing and now offers to do. * * *

That the court may consider and decree whether said contract of lease was not made without authority of law on the part of the defendant, and in excess of its corporate powers, and in violation of its corporate duties, so as not to be enforceable against your orator beyond the obligation of your orator to make return of or just compensation for the property demised; and that an account may be taken between your orator and the defendant, and that the amount may be ascertained that should be paid by your orator to the defendant on any account whatever.

Under this bill filed by Pullman's Palace Car Company the court granted an injunction against further actions at law under the lease; but inasmuch as some of the questions raised by the bill could be decided in the common-law suits already brought, it refused to enjoin those suits, but allowed them to go on. In the course of those suits, the Pullman Company succeeded in obtaining a judgment that the lease was *ultra vires* and void. It now contends that the result of such a decision is that the court of equity cannot take an account, or decree compensation; but that, on the contrary, the lease was so immoral that neither of the wicked corporations who made it can obtain any relief whatever against the other, and that the corporation in possession which successfully raised the question of invalidity can thereby retain all the property of the other, without account or compensation. It is submitted that this is neither the effect of the Supreme Court decision in the action at law, nor is it the general principle established by other authorities. In the action at law, the Supreme Court in its opinion, so far from holding that the Pullman Company was entitled to retain without compensation all the benefit of the property received under the lease, intimated directly the contrary. The court said:—

> The view which this court has taken of the question presented by this branch of the case, and the only view which appears to us consistent with legal principles, is as follows:—
>
> A contract of a corporation, which is *ultra vires*, in the proper sense, that is to say, outside the object of its creation as defined in the law of its organization, and therefore beyond the powers conferred upon it by the legislature, is not voidable only, but wholly void, and of no legal effect. The objection to the contract is, not merely that the corporation ought not to have made it, but that it could not make it. The contract cannot be ratified by either party, because it could not have been authorized by either. No performance on either side can give the unlawful contract any validity, or be the foundation of any right of action upon it.
>
> When a corporation is acting within the general scope of the powers conferred upon it by the legislature, the corporation, as well as persons contracting with it, may be estopped to deny that it has complied with the legal formalities which are prerequisites to its existence or to its action, because such requisites might in fact have been complied

with. But when the contract is beyond the powers conferred upon it by existing laws, neither the corporation nor the other party to the contract can be estopped by assenting to it, or by acting upon it, to show that it was prohibited by those laws. * * *

A contract *ultra vires* being unlawful and void, not because it is in itself immoral, but because the corporation, by the law of its creation, is incapable of making it, the courts, while refusing to maintain any action upon the unlawful contract, have always striven to do justice between the parties, so far as could be done consistently with adherence to law, by permitting property or money, parted with on the faith of the unlawful contract, to be recovered back, or compensation to be made for it.

In such case, however, the action is not maintained upon the unlawful contract, nor according to its terms; but on an implied contract of the defendant to return, or, failing to do that, to make compensation for property or money which it has no right to retain. To maintain such an action is not to affirm, but to disaffirm, the unlawful contract.

The ground and the limits of the rule concerning the remedy, in the case of a contract *ultra vires*, which has been partly performed, and under which property has passed, can hardly be summed up better than they were by Mr. Justice Miller in a passage already quoted, where he said that the rule "stands upon the broad ground that the contract "itself is void, and that nothing which has been done under it, nor the "action of the court, can infuse any vitality into it;" and that "where "the parties have so far acted under such a contract that they cannot "be restored to their original condition, the court inquires if relief can "be given independently of the contract, or whether it will refuse to "interfere as the matter stands." *Pennsylvania Railroad* vs. *St. Louis, &c., Railroad,* 118 U. S., 317.

Whether this plaintiff could maintain any action against this defendant, in the nature of a *quantum meruit*, or otherwise, independently of the contract, need not be considered, because it is not presented by this record, and has not been argued. This action, according to the declaration and the evidence, was brought and prosecuted for the single purpose of recovering sums which the defendant had agreed to pay by the unlawful contract, and which, for the reasons and upon the authorities above stated, the defendant is not liable for.

This intimation of the Supreme Court is in direct accordance both with its own decisions and the great current of authorities elsewhere.

An examination of the various cases in which the courts have been called upon to deal with illegal contracts will show that they group themselves under three classes, governed by three distinct principles of law, as follows:—

1. Neither a court of law nor a court of equity will lend its aid to enforce an illegal contract.

2. The court will not aid one who has received the benefit of an illegal contract to recover back the consideration which he paid for such benefit from the other party who has not repudiated the transaction, but has carried it out.

3. Where the contract has not been wholly performed and both parties abandon it, or the party who has received the consideration sets up the illegality in excuse of further performance on his part, a court of equity will lend its aid to rescind the arrangement and restore the *status quo*, as far as possible, by compelling a return of the consideration or its equivalent.

There has been considerable looseness of expression in some of the opinions of the courts in cases involving the question of rights under an illegal contract. In many cases the courts have declared broadly that they will not interfere for the benefit of either party to an illegal contract; but it will be found that such expressions always occur in cases where the court is asked to enforce the illegal contract as such. In other cases, the courts have said that they will not interfere to restore a consideration paid under an illegal contract; but it will be found that this occurs in cases where a party who has received the full benefit of the illegal contract is seeking on the ground of illegality to recover back the consideration which he paid for the benefit he received.

In the cases just mentioned where the courts have declined to interfere they have drawn no distinction between immoral and illegal contracts, since the same principles apply equally to both. Whether a contract be immoral or illegal, or whether it is against the letter or the policy of the law, it is equally true that the courts will not enforce it, nor interfere on behalf of one who, after receiving the full benefit, seeks to recover back the price which he paid for such benefit. In the first case, it is against

public policy to lend the court's aid to the enforcement of that which is contrary to law. In the second case, it is equally against public policy to aid one who has reaped the benefit of his immoral or illegal contract to commit a second wrong by recovering back the consideration.

When, however, the courts have been called upon to deal with the cases in which one who has obtained property under an illegal contract sets up the illegality as an excuse for performance, and *at the same time seeks to retain property received under the contract*, it has been found that the broad and general expressions so frequently used in the first two classes of cases are not applicable. The same public policy which induces the courts to withhold their aid when asked to compel the performance of an illegal contract, or when asked to restore the consideration to one who has had the benefit of it, leads them to grant relief when a party to a contract retains property obtained under it, while at the same time he seeks to avoid performance on the ground of illegality.

In the latter class of cases also all immoral and illegal contracts cannot be treated alike. For example, a contract to commit murder might be held to be so immoral that the parties would forfeit all right to any relief with regard to any matters growing out of it, but the same could not be said of a contract in restraint of trade, which, owing to the conflict of decisions, might be finally declared illegal, although originally entered into with the most praiseworthy motives, and upon the best legal advice as to its validity. It would be a monstrous doctrine that if two parties honestly made a contract which they were advised was legal, the fact that it was afterwards decided to be illegal would prevent the courts from adjusting the equitable rights of the parties with regard to property conveyed under it. It will be found that no such doctrine has been adopted by the courts, and that in the class of cases where one party, on the ground of illegality, repudiates the contract before final performance, the courts have always lent their aid to compel him to account for property of the other party in his possession. The under-

lying principle in such cases was well stated by Vice-Chancellor Stuart in

Bryson *vs.* Warwick, &c., Canal Co., 1 Sm. & Giff., 447, 469,

as follows:—

It is not consistent with equity that when the whole contract fails, one of the contracting parties should retain that money which was the property of the other contracting parties who had not received the consideration in respect of which alone the money could be properly paid.

This principle has been almost uniformly applied in the third class of cases to which reference has been made, viz., cases in which a party seeks at once to avoid performance by a plea of illegality and to retain the property which he received in consideration of such performance. In such cases the courts interfere not to enforce rights under the contract, but to restore the property or its equivalent, which the repudiating party has obtained by means of the contract. That this is the general rule is apparent from the following extracts from recent text writers:—

The general rule is that if an agreement is legally void and unenforceable by reason of some statutory or common-law prohibition, either party to the agreement who has received anything from the other party, and has failed to perform the agreement on his part, must account to the latter for what has been so received. Under these circumstances, the courts will grant relief irrespective of the invalid agreement, unless it involves some positive immorality, or there are other reasons of public policy why the courts should refuse to grant any relief in the case.

Morawetz on Private Corporations, section 721.

The same author adds in a footnote:—

It is sometimes said to be a maxim *in pari delicto melior est conditio possidentis.* The word *delicto* in this instance, however, means something more than mere illegality. It is difficult to define what constitutes such immorality as will cause the courts not only to declare a contract legally void, but to refuse all relief to the parties, irrespective of the contract. The decisions indicate that the matter rests largely in the discretion of the court in each particular case.

Persons who, at the expense of a corporation, have received benefit from an *ultra vires* transaction, even a transaction that is illegal as against public policy, may have to refund to the corporation to the extent of the benefit they have received.

Taylor on the Law of Private Corporations, section 314.

The general rule in regard to contracts which are not immoral, or where there are no other reasons of public policy why courts should refuse to grant relief, but are simply illegal and unenforceable on account of some statutory or common-law prohibition, is that either party to them who has received anything from the other party, and has failed to perform the agreement on his part, must account to the other for what has been so received. * * * These principles have been repeatedly applied in actions growing out of contracts entered into by corporations. Though illegal and unenforceable as contracts, recovery of the consideration has generally been allowed where higher public considerations than the immediate equities between the parties were not involved.

Spelling on Private Corporations, section 167.

Why should not a corporation be always liable to refund the money or property of a person which it has obtained improperly and without consideration, or, if unable to return it, to pay for the benefit obtained thereby? To say that a corporation cannot sue or be sued upon an *ultra vires* arrangement is one thing. To say that it may retain the proceeds thereof which have come into its possession, without making any compensation whatever to the person from whom it has obtained them, is something very different, and savors very much of an inducement to fraud. On the other hand, a person who has obtained corporate property or funds in an *ultra vires* transaction, has obtained what the parties dealing with him had no power, no authority to alienate. It belongs to the corporation, not to him. Therefore, as in every other case of a person obtaining, however *bona fide*, that which belongs to another, such person must make restoration, in specie or in value. It seems necessarily to follow that restoration must similarly be made when the alienation was *ultra vires*.

Waterman on Corporations, section 161, page 608.

Though a corporation cannot be sued, any more than any other citizen, directly upon a contract or analogous transaction which does not bind it, yet if it sets up this defense, it must restore to the other party what it has obtained from him. It may repudiate the transaction if it chooses, but if so, it must repudiate altogether; it cannot reprobate and approbate; it cannot keep what in another form it has rejected.

Green's Brice's Ultra Vires, 2nd American Edition, 721, cited in 1st Waterman on Corporations, section 161, page 608.

The general principles thus laid down by the text writers have been adopted almost, if not quite, uniformly by the United States Courts, and have become firmly fixed in the Federal jurisprudence, as will appear by a brief *résumé* of the cases in which the Federal courts have dealt with illegal contracts.

In the case of

Brooks *vs.* Martin, 2 Wall., 70,

a partnership contract, confessedly against public policy, had been carried out, and the profits in the shape of money had passed into the hands of one partner. The courts sustained a bill by the other partner for a division of the proceeds. Mr. Justice Miller, delivering the opinion, said:—

Does it lie in the mouth of the partner, who has by fraudulent means obtained possession and control of all these funds, to refuse to do equity to his other partner because of the wrong originally done or intended to the soldier? It is difficult to perceive how the statute enacted for the benefit of the soldier is to be rendered any more effective by leaving all this in the hands of Brooks, instead of requiring him to execute justice as between himself and his partner; or what rule of public morals will be weakened by compelling him to do so.

In the case of

Marsh *vs.* Fulton County, 10 Wall., 676,

a suit was brought by an innocent holder for value upon certain county bonds which were invalid and not authorized by statute. The court (Mr. Justice Field delivering the opinion), while holding that the bonds were invalid, and could not be made the foundation of an action, at the same time announced the following principle, to which it has since steadily adhered:—

We do not mean to intimate that liabilities may not be incurred by counties independent of the statute. Undoubtedly they may be. The obligation to do justice rests upon all persons, natural and artificial, and if a county obtains the money or property of others without authority, the law, independent of any statute, will compel restitution or

compensation; but this is a very different thing from enforcing an obligation admitted to be created in one way when the statute declares that it shall only be created in another and different way.

In the case of

City of Louisiana *vs.* Wood, 102 U. S., 294,

a municipal corporation issued bonds which were illegal. A purchaser of such bonds tendered them back to the city, and demanded the repayment of the money which the city had received, and subsequently brought an action. The court (Chief Justice Waite delivering the opinion) said:—

While, therefore, the bonds cannot be enforced because defectively executed, the money paid for them may be recovered back. As we took occasion to say in Marsh *vs.* Fulton County, 10 Wall., 676, the obligation to do justice rests upon all persons, natural or artificial, and if a county obtains the money or property of others without authority, the law, independent of any statute, will compel restitution or compensation.

In the case of

Congress, &c., Spring Co. *vs.* Knowlton, 103 U. S., 49,

the point involved in the present case was directly considered. In that case, in pursuance of an illegal scheme to increase the capital of a corporation and issue full-paid stock, in consideration of payments amounting to only eighty per cent. of its par, one Knowlton, a trustee and vice-president of the corporation, paid an installment of subscription to such stock. He failed to pay subsequent calls, and the company forfeited his stock. He then brought suit in the State of New York to recover back the installment paid. The Referee, to whom the case was referred, reported that he was entitled to recover, and judgment was entered upon the Referee's report. Upon an appeal to the Commission of Appeals of the State of New York, that judgment was reversed upon elaborate opinions by the commissioners. The commission based its opinion upon the fact that the scheme was illegal and contrary to public policy; that the contract had been partially executed by the payment of the first installment,

and that under these circumstances the court would not allow the plaintiff to recover back this first installment so paid as part of an illegal agreement. The suit was subsequently removed to the Circuit Court for the Northern District of New York, and upon the trial that court allowed the plaintiff to recover. A writ of error was taken to the Supreme Court of the United States, which sustained the judgment of the Circuit Court, saying:—

We think it clear that there was only a part performance of the illegal contract between the company and Knowlton in reference to the new stock for which Sheehan subscribed, and which he agreed to transfer to Knowlton. * * *

It is to be observed that the making of the illegal contract was *malum prohibitum* and not *malum in se*. There is no moral turpitude in such a contract, nor is it of itself fraudulent, however much it may afford facilities for fraud.

The question presented is, therefore, whether, conceding the contract to be illegal, money paid by one of the parties to it in part performance can be recovered back, the other party not having performed the contract, or any part of it, and both parties having abandoned the illegal agreement before it was consummated.

We think the authorities sustain the affirmative of this proposition. Their result is fairly stated in 2 Comyn on Contracts, 361, as follows: "Where money has been paid upon an illegal contract, it is a general "rule that if the contract be executed and both parties are *in pari de-* "*licto*, neither of them can recover from the other the money so paid, "but if the contract continues executory and the party paying the "money be desirous of rescinding it, he may do so and recover back "by action of *indebitatus assumpsit* for money had and received. And "this distinction is taken in the books that where the action is in "affirmance of an illegal contract, the object of which is to enforce the "performance of an engagement prohibited by law, clearly such an "action can in no case be maintained, but where the action proceeds in "disaffirmance of such a contract, and, instead of endeavoring to en- "force it, presumes it to be void and seeks to prevent the defendant "from retaining the benefit which he derived from an unlawful act, "then it is consonant to the spirit and policy of the law that the plain- "tiff should recover."

Mr. Parsons, in his work on Contracts, vol. II., page 746, says: "All "contracts which provide that anything shall be done which is dis- "tinctly prohibited by law or morality or public policy are void, so he "who advances money in consideration of a promise or undertaking "to do such a thing may at any time before it is done rescind the "contract and prevent the thing from being done and recover back the money."

To the same effect see 2 Add. Cont., section 1412; Chit. Cont., 944; 2 Story Cont., section 617; 2 Greenl. Ev., section 111.

The views of the text writers are sustained by a vast array of authorities, both English and American.

A few will be cited. The case of Taylor *vs.* Bowers, L. R., 1 Q. B. D., 291, was an action to recover the value of property assigned for the purpose of defrauding creditors. A verdict was rendered for plaintiff with leave to move to enter a verdict for the defendant. A rule was obtained on the ground that the plaintiff could not, by the allegation of his own fraud, get back the goods from the defendant. The Queen's Bench sustained the verdict, the Chief Justice, Cockburn, delivering the opinion.

The defendant then appealed to the Court of Appeals, where the judgment was affirmed. Both courts agreed that an illegal contract partially performed might be repudiated and the money paid upon it recovered.

Lord Justice Mellish, in the Court of Appeals, said: "If the illegal "transaction had been carried out, the plaintiff himself could not, in "my judgment, have recovered the money. But the illegal transaction "was not carried out; it came wholly to an end. To hold that the "plaintiff is entitled to recover does not carry out the illegal trans-"action, but the effect is to put everybody in the same situation as they "were before the illegal transaction was determined on and before the "parties took any steps to carry it out. That, I apprehend, is the true "distinction in point of law. If money is paid or goods delivered for "an illegal purpose, the person who had so paid the money or deliv-"ered the goods may recover them back before the illegal purpose is "carried out; but if he waits till the illegal purpose is carried out, or if "he seeks to enforce the illegal transaction, in neither can he maintain "an action; the law will not allow that to be done."

The same rule substantially is laid down in the following English cases: Lowry *vs.* Bourdieu, 2 Doug., 468; Tappenden *vs.* Randall, 2 Bos. & P., 467; Hastelow *vs.* Jackson, 8 Barn & Co., 221; Bone *vs.* Ekless, 5 Hurls. & N., 925; Lacaussade *vs.* White, 7 T. R., 535; Colton *vs.* Thurland, 5 T. R., 405; Smith *vs.* Bickmore, 4 Taunt., 474; Munt *vs.* Stokes, 4 T. R., 561.

In Morgan *vs.* Groff, 4 Barb., 524, it was held that money paid on an illegal contract, which remains executory, can be recovered back in an action founded on a disaffirmance, and on the ground that it is void.

To the same effect are the following cases: Ins. Co. *vs.* Kip, 8 Cow., 20; Merritt *vs.* Millard, 4 Keyes, 208; White *vs.* Bk., 22 Pick., 181; Lowell *vs.* R. R. Co., 23 Pick., 24.

In Thomas *vs.* Richmond, 12 Wall., 349 (79 U. S., 453), this court cites with approval the note of Mr. Frere to the case of Smith *vs.* Bromley, 2 Doug., 696, to the effect that a recovery can be had as for money had and received, when the illegality consists in the contract itself, and that contract is not executed; in such case there is a *locus*

penitentiæ; the *delictum* is incomplete; the contract may be rescinded by either party.

The rule is applied in the great majority of the cases, even when the parties to the illegal contract are *in pari delicto*, the question, which of the two parties is the more blamable, being often difficult of solution and quite immaterial. We think, therefore, that the facts of this case present no obstacle to a recovery by Knowlton's administrators of the sum paid by him on the stock which had been subscribed for by Sheehan.

The law of New York does not, in express terms, forbid a corporation from issuing certificates for full-paid stock when the stock has not been fully paid. The illegality of such an issue is deduced from several sections of the law under which the Congress and Empire Spring Company was organized, namely, sections 38, 40, 41 and 49. We think it is fairly inferable from the record that the trustees of the company, one of whom was Knowlton, did not know that the plan adopted by them for the increase of the stock was illegal; and that when they discovered that it was forbidden by the law, and before any harm was done or could have been done, the scheme was abandoned. Under such circumstances, the rule which would prevent the recovery of the money paid to carry on the illegal plan would be a very harsh one, not founded on any law or public policy.

Mr. Justice Harlan dissented, but solely upon the ground that the question had already been decided by the Commission of Appeals of the State of New York, and that the judgment of that court was binding upon the parties. This case has additional weight from the fact that the Supreme Court of the United States, having before it the report of a Referee, two opinions and one dissenting opinion by the Commissioners of Appeals of New York, arrived at an opposite conclusion from that of the Commission of Appeals, and sustained to its fullest extent the principle for which the Central Transportation Company are contending in the present case, and the rule thus established has since been steadily adhered to.

In the case of

Parkersburg *vs.* Brown, 106 U. S., 487,

illegal bonds were issued by a city and came into the hands of purchasers. Upon a bill in equity filed by those purchasers to recover property which had been conveyed to the city in consideration of the bonds, the court held that to the extent of the property received the city was

bound to make compensation. Mr. Justice Blatchford delivered the opinion, and said:—

But, notwithstanding the invalidity of the bonds and of the trust, the O'Briens had a right to reclaim the property and to call on the city to account for it. The enforcement of such right is not in affirmance of the illegal contract, but is in disaffirmance of it, and seeks to prevent the city from retaining the benefit which it has derived from the unlawful act. (2 Com. Cont., 109.) There was no illegality in the mere putting of the property by the O'Briens in the hands of the city. To deny a remedy to reclaim it is to give effect to the illegal contract. The illegality of that contract does not arise from any moral turpitude. The property was transferred under a contract which was merely *malum prohibitum*, and where the city was the principal offender. In such a case the party receiving may be made to refund to the person from whom it has received property for the unauthorized purpose, the value of that which it has actually received. White *vs.* Franklin Bank, 22 Pick. (Mass.), 181; Morville *vs.* American Tract Society, 123 Mass., 129; Davis *vs.* Old Colony Railroad, 131 *Id.*, 258, 275; and cases there cited. The O'Briens having indorsed and sold the bonds, the holders of the bonds succeeded to such right of the O'Briens, as an incident to the ownership of the bonds. The O'Briens suffered the city to take possession of and administer the property. They were made parties to this suit originally, and have made no defense to it. The right which the plaintiffs so have to call on the city to render an account of the property is one which can be properly adjudicated in this suit in equity.

In Salt Lake City *vs.* Hollister, 118 U. S., 256, the court, Mr. Justice Miller delivering the opinion, while deciding the case upon a ground not involved in the present case, said:—

It remains to be observed that the question of the liability of corporations on contracts which the law does not authorize them to make, and which are wholly beyond the scope of their powers, is governed by a different principle. Here the party dealing with the corporation is under no obligation to enter into the contract. No force or restraint or fraud is practiced on him. The powers of these corporations are matters of public law open to his examination, and he may and must judge for himself as to the power of the corporation to bind itself by the proposed agreement. It is to this class of cases that most of the authorities cited by appellants belong, cases where corporations have been sued on contracts which they have successfully resisted because they were *ultra vires*.

But, even in this class of cases, the courts have gone a long way to enable parties who had parted with property or money on the faith of

such contracts to obtain justice by recovery of the property or the money specifically, or as money had and received to plaintiff's use. Thomas *vs.* Railroad Co., 101 U. S., 71; Louisiana *vs.* Wood, 102 U. S., 294; Chapman *vs.* Douglass County, 107 U. S., 348, 355.

In the case of

Penna. Railroad Co. *vs.* St. Louis, &c., R. R. Co., 118 U. S., 290,

the court (Mr. Justice Miller delivering the opinion), in refusing to enforce specific performance of an illegal lease, drew a very clear distinction between cases for the enforcement of such contracts and cases for the adjustment of the equities between the parties by compelling compensation for the property after the lease had been avoided, as follows:—

It is argued, in support of the decree, that though the contract of lease may be void, so that no action could originally have been sustained upon it, there has been for ten years such performance of it in the use, possession and control of plaintiff's road and its franchises by the defendants that they cannot now be permitted to repudiate or abandon it; that it now presents one of a class of cases which hold that where a void contract has been so far executed that property has passed under it and rights have been acquired under it the courts will not disturb the possession of such property or compel restitution of money received under such a contract.

Undoubtedly there are such decisions of courts of high authority, and there is such a principle, very sound in its application to appropriate cases. But we understand the rule in such cases to stand upon the broad ground that the contract itself is void, and that neither what has been done under it nor the action of the court can infuse any vitality into it. Looking at the case as one where the parties have so far acted under such a contract that they cannot be restored to their original condition, the court inquires if relief can be given independently of the contract, or whether it will refuse to interfere as the matter stands.

The same distinction was again stated in the case of

Pittsburgh, &c., Bridge Co. *vs.* Keokuk, &c., Bridge Co., 131 U. S., 371,

in which the court (Mr. Justice Gray delivering the opinion) said:—

It is proper to add that our judgment does not rest in any degree upon the ground suggested in argument, that the bridge contract and

the lease having been executed, the Pittsburgh and Pennsylvania companies, having received the benefits of them, are estopped to deny their validity, because, according to many recent opinions of this court, a contract made by a corporation, which is unlawful and void because beyond the scope of its corporate powers, does not by being carried into execution become lawful and valid, but the proper remedy of the party aggrieved is by disaffirming the contract and suing to recover, as on a *quantum meruit*, the value of what the defendant has actually received the benefit of. *Louisiana* vs. *Wood*, 102 U. S., 294; *Parkersburg* vs. *Brown*, 106 U. S., 487, 503; *Chapman* vs. *Douglass County*, 107 U. S., 348, 360; *Salt Lake City* vs. *Hollister*, 118 U. S. 256, 263; *Pennsylvania Railroad* vs. *St. Louis, &c., Railroad*, 118 U. S., 290, 317, 318.

In the case of

Central Transportation Co. *vs.* Pullman's Palace Car Company, 139 U. S., 24,

being the case which gave rise to the present bill in equity, the court, Mr. Justice Gray delivering the opinion, is careful to make the same distinction, saying:—

A contract *ultra vires* being unlawful and void, not because it is in itself immoral, but because the corporation, by the law of its creation, is incapable of making it, the courts, while refusing to maintain any action upon the unlawful contract, have always striven to do justice between the parties, so far as could be done consistently with adherence to law, by permitting property or money, parted with on the faith of the unlawful contract, to be recovered back, or compensation to be made for it.

In such case, however, the action is not maintained upon the unlawful contract nor according to its terms, but on an implied contract of the defendant to return, or, failing to do that, to make compensation for property or money which it has no right to retain. To maintain such an action is not to affirm, but to disaffirm, the unlawful contract.

In the case of

Logan County Bank *vs.* Townsend, 139 U. S., 67,

the plaintiff sold to a national bank, for sixty-eight cents on the dollar, $12,800 of the bonds of a municipal corporation, under an agreement that the bank would, upon demand, replace them to him at the same or a less price. The court held that while the contract was one which the bank had no right to make, it was bound to refund the property or its value, saying (Mr. Justice Harlan delivering the opinion):—

If the bank's want of power under the statute to make such a contract of purchase may be pleaded in bar of all claims against it based upon the contract—and we are assuming for the purposes of this case that it may be—it is bound, upon demand, accompanied by a tender back of the price it paid, to surrender the bonds to its vendor. The bank, in this case, insisting that it obtained the bonds of the plaintiff in violation of the Act of Congress, is bound, upon being made whole, to return them to him. No exemption or immunity from this principle of right and duty is given by the National Banking Act. "The "obligation to do justice," this court said in *Marsh* vs. *Fulton County*, 10 Wall., 676, 684, "rests upon all persons, natural and artificial, and "if a county obtains the money or property of others without au- "thority, the law, independently of any statute, will compel restitution "or compensation." "This," it was further said, "is a very different "thing from enforcing an obligation attempted to be created in one "way when the statute declares that it shall only be created in another "and different way." Upon this obligation to do justice rests the decision in *Louisiana* vs. *Wood*, 102 U. S., 294, 298, 299, where this court held a municipal corporation liable to an action for money received on bonds issued by it, and which, being issued without authority of law, were invalid. The money it got was paid to it in the belief that the bonds were valid obligations of the corporation, and therefore was paid by mistake. After citing *Moses* vs. *Macferlan*, 2 Burrow, 1005, in which it was said that an action lies for money paid by mistake, or upon a consideration which happens to fail, or for money got through imposition, and also *Marsh* vs. *Fulton County*, the court, speaking by Chief Justice Waite, said that the law implied from what was done a contract "that the city would, on demand, return the money paid to "it by mistake, and, as the money was got under a form of obligation "which was apparently good, that interest should be paid at the legal "rate from the time the obligation was denied."

So in Parkersburg *vs.* Brown, 106 U. S., 487, 503, involving the liability of a municipal corporation upon bonds issued in its name and secured by deed of trust given by the person to whom they were loaned, and which bonds were held to be void for want of authority to execute them, the court said:—

"But notwithstanding the invalidity of the bonds and of the trust, the "O'Briens had a right to reclaim the property and to call on the city to "account for it. The enforcement of such right is not in affirmance of "the illegal contract, but is in disaffirmance of it, and seeks to prevent "the city from retaining the benefit which it has derived from the un- "lawful act. (2 Com. Cont., 109.) There was no illegality in the mere "putting of the property by the O'Briens in the hands of the city. To "deny a remedy to reclaim it is to give effect to the illegal contract. "The illegality of the contract does not arise from any moral turpitude. "The property was transferred under a contract which was merely "*malum prohibitum*, and where the city was the principal offender. In

"such a case the party receiving may be made to refund to the person "from whom it has received the property for the unauthorized purpose, "the value of that which it has actually received," citing White *vs.* Franklin Bank, 22 Pick., 181; Morville *vs.* American Tract Society, 123 Mass., 129; and Davis *vs.* Old Colony Railroad, 131 Mass., 258, 275. See also Hitchcock *vs.* Galveston, 96 U. S., 341, 351; Chapman *vs.* County of Douglass, 107 U. S., 348, 356, 357; Salt Lake City *vs.* Hollister, 118 U. S., 256, 263; Clark *vs.* Saline County, 9 Nebraska, 516; Pimental *vs.* San Francisco, 21 California, 351, 362.

In the case of

Block *vs.* Darling, 140 U. S. Reports, 234,

in an action for a deposit of money, the defense was that the money had been deposited in order to cheat and defraud the plaintiff's creditors. The court held that the plaintiff might recover, saying (Mr. Justice Harlan delivering the opinion):—

Nor did the court below err in excluding evidence offered by the defendants conducing to show that the money claimed by the plaintiff to have been deposited with them to be paid to him on his order was so deposited with the intent to cheat and defraud his creditors. The evidence, if admitted, would not have relieved the defendants from responsibility to account for it. The plaintiff's suit to compel the return of the money may be regarded as one in disaffirmance of the arrangement under which the defendants claimed to have received it; and, if successful, would tend to defeat the alleged purpose of defrauding his creditors by having it kept upon secret deposit with the defendants. It is not a suit to recover money received and paid out under an illegal or immoral contract which has been fully executed. The suit is necessarily a disavowal upon the part of the plaintiff of any purpose to hide this money from his creditors. To allow the defendants to retain it upon the ground that he had originally the purpose to conceal it from his creditors would be inconsistent with the spirit and policy of the law. Spring Co. *vs.* Knowlton, 103 U. S., 49, 58, and authorities there cited.

In the case of

St. Louis, &c., Railroad Co. *vs.* Terre Haute, &c., Railroad Co., 145 U. S., 393,*

* This case was relied upon by appellant's counsel, but they failed to notice or call to the attention of the court the distinction pointed out in the opinion between an action by one who sets up the illegality for the purpose of recovering property for which he has received or is receiving full compensation and an action by one who, having been refused compensation because of illegality, merely seeks to recover his property for which the contract compensation was refused.

the court, in refusing relief to plaintiff, who, being in receipt of the benefit of an illegal transaction, was seeking the aid of a court to set it aside as against the other party, who had never repudiated it, said:—

This case it not like those in which the defendant, having abandoned or refused to perform the unlawful contract, has been liable to the plaintiff as upon an implied contract for the value of what it had received from him, and had no right to retain. Spring Co. *vs.* Knowlton, 103 U. S., 49; Logan County Bank *vs.* Townsend, 139 U. S., 67, and cases there cited.

The cases in the lower Federal Courts are uniformly to the same effect.

In the case of

American Union Telegraph Co. *vs.* The Union Pacific Railway Co., 1 McCrary, 188,

a corporation was enjoined against retaking property conveyed under an illegal contract without restoring the property which it had received. The court, McCrary, circuit judge, delivering the opinion, said:—

No case has been cited in argument, nor have I been able to find one, which holds that a court of equity, having jurisdiction of the parties to "and the subject matter of" an illegal contract, should require one of such parties to give up what he has received under it, without requiring the other to do the same. Many cases hold that a corporation which has made a contract *ultra vires*, which has not been fully performed, is not estopped from pleading its own want of power when sued upon such contract; but that doctrine does not apply to a case where a party comes into a court of equity, and, while retaining all that he has received upon such a contract, asks to be permitted to retake what he has parted with under it. I take it there is nothing in the law, as there is certainly nothing in the principles of equity, to estop the court from saying that the obligation to return the property transferred under these contracts is mutual, and shall not be enforced against one of the parties without being at the same time enforced against the other. As the parties and the subject matter are now before the court, it is the duty of the court, as far as possible, to place them in *statu quo*.

The injunction heretofore granted will be so far modified as to make it clear that the railroad company is at liberty to institute legal proceedings, either by cross bill in this case or otherwise, to cancel and

set aside the said contracts upon a return of the consideration, and to settle and adjust, upon principles of equity, the accounts between the parties.

In the subsequent case of

Farmers' Loan and Trust Co. *vs.* St. Joseph, &c., Railroad Co., 1 McCrary, 247,

in the same court, a railroad company was allowed to recover just compensation for the use of its property, leased under an invalid lease, the court saying:—

But inasmuch as the transaction is not tainted with any immorality, I hold that the petitioner is entitled to recover, without regard to the contract, a just compensation for the use of its road and property during the time in controversy.

In another case in the same court,

Western Union Telegraph Co. *vs.* Union Pacific Railway Company, 1 McCrary, 558,

which was an attempt by a company to recover possession of property conveyed under an illegal contract without a return of the consideration, the same judge said:—

There is another ground upon which I should feel constrained to hold that the plaintiff has, by the amended bill, shown an interest in the telegraph lines and property in controversy which a court of equity should protect. Even if we assume that the contract is void, the property accumulated or constructed under it must, as between the parties, be disposed of according to equity, and the court will not refuse to deal with that property on the ground that it was acquired under an illegal contract. Such is the doctrine established by the Supreme Court of the United States. The case of *Planters' Bank* vs. *Union Bank*, 16 Wall., 483, was a suit to recover money received for the sale of Confederate bonds. In the course of the opinion Mr. Justice Strong said: "It may be that no action would lie against a purchaser "of the bonds, or against the defendants, on any engagement made by "them to sell. Such a contract would have been illegal. But when "the illegal transaction has been consummated, when no court has been "called upon to give aid to it, when the proceeds of the sale have been "actually received, and received in that which the law recognizes as "having had value, and when they have been carried to the credit of "the plaintiffs, the case is different. The court is there not asked to "enforce an illegal contract. The plaintiffs do not require the aid of "any illegal transaction to establish their case. It is enough that the

"defendants have in hand a thing of value that belongs to them. Some "of the authorities show that, though an illegal contract will not be "executed, yet, when it has been executed by the parties themselves, "and the illegal object of it has been accomplished, the money or thing "which was the price of it may be a legal consideration between the "parties for a promise, express or implied, and the court will not "unravel the transactions to discover its origin." *Id.*, 499, 500.

And see the following cases cited and approved by Justice Strong in his opinion: Faikney *vs.* Reynolds, 4 Burrows, 66 (2069); Petrie *vs.* Hannay, 3 Term, 418, 419; Lestapies *vs.* Ingraham, 5 Barr, 71; Armstrong *vs.* Toler, 11 Wheat., 258; McBlair *vs.* Gibbes, 17 How., 232, 236; Brooks *vs.* Martin, 2 Wall., 70.

In Brooks *vs.* Martin it was held, upon full consideration, that after a partnership transaction, confessedly in violation of an Act of Congress, has been carried out, a partner in whose hands the profits are cannot refuse to account for and divide them on the ground of the illegal character of the original contract. All of these cases admit the invalidity of a contract bottomed in immorality or in a violation of a statute, and they all agree that where a party comes into court and asks relief upon such a contract it must be denied. But they make a distinction between those cases in which a court is asked to enforce such a contract and those in which a court is asked to deal with property which has been acquired as the result of the execution thereof. Such property may constitute the subject matter of a suit at law or in equity, notwithstanding the invalidity of the contract under which it was acquired. Applying this doctrine to the case in hand, we find, according to the allegations of the amended bill, that besides the property acquired by plaintiff from the United States Telegraph Company (and which became and is a part of the line), the plaintiff has expended upon said line over $100,000 in excess of the contributions made by the railway company under the contract.

The fact seems to be that by expenditures made by the plaintiff, and by contributions from the railway company, the line has been constructed, reconstructed and maintained. If the contract were set aside, it would, I think, leave the parties joint owners of the property, and a case for equity jurisdiction, in the adjustment and settlement of their respective interests, would be presented.

In the case of

Western Union Telegraph Co. *vs.* Burlington, &c., Railroad Co., 3 McCrary, 130,

which was the case of a bill and cross bill arising under a contract in restraint of trade, the same judge said:—

We think the contract is capable of being construed divisibly.

It is not, however, necessary to pass finally upon this question, for we are clearly of the opinion that, even assuming the invalidity of the

entire contract, the plaintiff is entitled to relief, unless deprived of its interest in the property by the foreclosure proceedings, of which we shall speak presently. If we leave out of view entirely any claim of right based upon the contract, we find the complainant in possession of a line of telegraph constructed jointly by it and the railway company, each party furnishing portions of the material and labor for its erection, repair and operation.

The railway company furnished the poles and all the labor, except a foreman, to construct the line; the telegraph company furnished a foreman to superintend the work, and also furnished the wire and insulators. This certainly constituted the two companies joint owners of the property. In this respect the case does not differ materially from several other telegraph cases which have recently been considered in this circuit. *Atlantic and Pacific Tel. Co.* vs. *U. P. Ry. Co.*, 1 McCrary, 541; *Western Union Tel. Co.* vs. *U. P. Ry. Co.*, 1 McCrary, 558; *Western Union Tel. Co.* vs. *St. Joseph, &c., R. Co.*, 1 McCrary, 565.

In each of these cases the contract, being substantially the same as the one now before us, was held invalid, but the right of the railroad company, in consequence of such invalidity, to take the whole telegraph property was emphatically denied.

In the case of

Newcastle Northern Railroad Co. *vs.* Simpson, 23 Federal Reporter, 214,

the court (Acheson, Cir. J., delivering the opinion) laid down the rule as follows:—

The established rule in equity is that a corporation is accountable for benefits which it has received under an *ultra vires* transaction. Green's Brice, Ultra Vires, 717. Hence in holding that the defendant's compensation for the materials furnished and work done by him should be measured by what it would have cost the plaintiff's company to employ a responsible contractor to provide the same materials and perform the same work, the Master, I think, adopted a just standard. While the defendant is not under any guise to receive damages for the loss of his bargain, yet he is not to be put off with a bare reimbursement of his actual outlay. He is entitled to be paid for what he has done fair rates, such as any other railroad contractor might have recovered therefor, in the absence of express agreement as to compensation. * * *

Finally, I am of opinion that the plaintiff company is justly chargeable with interest on the amount found to be due to the defendant when the work was stopped. Green's Brice, Ultra Vires, 728. No equitable reason appears for denying interest. It is not shown or pretended that the company ever made a tender of money to the defendant or set apart or kept on hand a fund to pay him.

The rule thus established by the Federal authorities is so clear that it is not thought necessary to discuss the various cases which have arisen in the State Courts. In one way or another, either by the application of the doctrine of estoppel or by the application of the principles above laid down by the Federal courts, the State courts have always prevented a party from setting up the illegality of a contract as an excuse for performance, and at the same time retaining the property which by reason of that contract he has obtained. There is, however, a very recent case in the Supreme Court of New Hampshire which is so close in its facts to the present case that it may not be out of place to cite it. It is the case of

Manchester, &c., R. R. Co. *vs.* Concord, &c., R. R. Co., 66 New Hamp., 100, 20 Atlantic Reporter, 383.

This was a bill in equity for an accounting and the return of certain rolling stock belonging to the plaintiff corporation which went into the possession of the defendant corporation, and which the latter retained. To the bill in equity the defendant filed three pleas. The first plea alleged that the contract between the parties under which it went into possession of the property was *ultra vires*, and hence the plaintiff could not recover. To this plea the court said:—

The first plea avers that the contracts between the parties under which the defendant went into and retained the possession and management of the plaintiff's road for more than thirty years were wholly beyond the corporate powers of either party to make or to ratify, and that therefore the defendant should be hence dismissed with its costs and charges. In other words, not denying that it has received the full benefit of the performance of the contract by the plaintiff, the defendant says that it should in equity be permitted to retain the benefit and property so acquired and be dismissed with costs, because it was not empowered by its charter to perform what it promised the plaintiff in return. The demurrer to this plea is sustained. The defense set up is so repugnant to the natural sense of justice, so contrary to good faith and fair dealing, and so opposed to the weight of modern authority, that it need only be said that, in equity at least, neither party to a transaction *ultra vires* simply will be heard to allege its invalidity while retaining its fruits. However the contractual power of the de-

fendant may be limited under its charter, there is no limitation of its power to make restitution to the other party whose money or property it has obtained through an unauthorized contract, nor as a corporation is it exempted from the common obligation to do justice which binds individuals, for this duty rests upon all persons alike, whether natural or artificial.

The third plea set up that the road had been operated in violation of an anti-monopoly statute, and that property acquired by virtue of such operation could not be recovered. As to this the court said:—

The contracts have been executed on the part of the plaintiff; they were not immoral; and they were illegal only so far as they were prohibited by statute. Taking this to be so, and regarding the parties as truly in *pari delicto*, the case still falls within the general rule, "that if "an agreement is legally void and unenforceable by reason of some "statutory or common-law prohibition, either party to the agreement "who has received anything from the other party, and has failed to "perform the agreement on his part, must account to the latter for "what has been so received. Under these circumstances the courts "will grant relief irrespective of the invalid agreement, unless it in- "volves some positive immorality, or there are other reasons of public "policy why the courts should refuse to grant relief in the case." Mor. Corp., section 721. He adds: "These doctrines have been applied "repeatedly in suits arising out of contracts entered into by corpo- "rations, although prohibited by statute or by the common law, and "although the contracts were held illegal and unenforceable in these "cases, a recovery was allowed to the extent of the consideration "received."

The court then, after citing the case of Brooks *vs.* Martin, 2d Wallace, 70, said:—

We are aware that the doctrine of this case has been criticised, and perhaps denied, by some of the State courts; but it was reaffirmed in Planters' Bank *vs.* Union Bank, *supra*, and it is not found to have been changed or modified in any subsequent decision. It requires no words to apply the doctrine of Brooks *vs.* Martin to the present case; it applies itself. Nor do we find that its application involves any immorality, or that it is forbidden by any other reasons of public policy. Doubtless a court of equity is not positively bound to interfere in cases of this description, and may exercise its discretion; but it is peculiarly the office of equity to do justice, and justice manifestly requires that the defendant should not keep any part of the plaintiff's equitable share of the property it obtained from operating the plaintiff's road,

whether legally or illegally. Whatever the legislature may have intended to accomplish by the anti-monopoly Act of 1867, there is no reason to suppose their intention was to reward the Concord Railroad for its violation. And, however it may once have been, it is certainly now difficult to see how public policy is subserved by allowing the addition of a private wrong to a public wrong, which necessarily results when, without any equivalent in return, one party to an executed illegal transaction excludes the other from participating in the proceeds; and we entirely fail to appreciate the morality which denies in such cases any rights to the party whose money or other property has been thus appropriated by his associate, contrary to express agreement and common honesty, and which in conscience the benefited party cannot retain. The demurrer to the third plea is also sustained.

We may say of these authorities, as was said of Brooks *vs.* Martin in the last opinion cited, that it requires no words to apply their doctrine to the present case; it applies itself. And they show that the contention of appellant's counsel, that their client may by setting up the illegality of the contract retain the Central Transportation Company's property without compensation, is as contrary to law as it is contrary to good morals.

UNDER ALL THE EVIDENCE THE MEASURE OF COMPENSATION FIXED BY THE DECREE OF THE COURT BELOW WAS A MINIMUM ONE, AND, TO QUOTE THE LANGUAGE OF THE CONCURRING OPINION OF JUDGE DALLAS, "QUITE AS FAVORABLE "TO THE PULLMAN COMPANY AS UPON ANY POSSIBLE VIEW OF "THE FACTS AND THE LAW COULD REASONABLY HAVE BEEN "REACHED."

The claim of appellant's counsel that the mode of ascertaining the proper compensation finally adopted by the court was inconsistent with its original opinion, and was unfair to the Pullman Company, rests upon a superficial statement of the facts, and will upon a careful examination of the evidence, as it was produced in the various stages of the cause, prove to be without foundation. It must be remembered that the evidence showed that at the time of the lease, the Pullman Company and the Central Transportation Company were sleeping-car companies of about equal size, the one substantially controlling lines west of

Chicago, the other substantially controlling the lines afterwards incorporated into the great Pennsylvania system from St. Louis and Chicago to the Atlantic Coast. Each had its own contracts and its own cars, and each had practically a monopoly of its own territory. The lease was made in pursuance of a suggestion to consolidate the two companies, and was drawn by counsel as a practical method of effecting such consolidation. In point of fact, a practical consolidation was made. The lessor company renewed contracts in its own name, substituted its own cars, and after a year or two even ceased to keep a separate account of the lessee's property, so that during the running of the lease, the property of the Central Transportation Company had become so thoroughly absorbed into the consolidated plant, which was called by the name of the Pullman Company, that identification and separation became impossible. Even the cars which the Pullman Company in its bill alleged that it had tendered turned out to be Pullman cars arbitrarily assumed by the Pullman Company for the purposes of the bill to be substitutes for the original Central Transportation Company cars. Under these circumstances, as the property so changed its form that separate appraisal was impossible, there was no other way to ascertain the value than to ascertain what was the value at the date of the lease and whether the evidence showed that as part of the consolidated plant it had retained that value at and after the repudiation of the lease. There could be no other means of ascertaining the value, and on this point there is no inconsistency in the opinions of the court.

Another question which arose in the case was one of perhaps more difficulty, and that was whether the Pullman Company was to be considered as trustee during the lease down to the time of repudiation, liable to account for any excess of earnings over the rental paid, or to be allowed any deficiency below the rental paid. There were two views which might have been held with regard to this. First, that inasmuch as the lease was void from the beginning, the Pullman Company was to be considered as

a trustee of the property. Second, that so far as the transaction had been carried out by both parties, it was an executed transaction, as to which neither had a claim against the other, and that therefore no account of the earnings during the lease should be had. The court in its opinion adopted the former view, and directed a comparison of the earnings with the rental. Owing to the failure of the Pullman Company to produce the information necessary to make that comparison, it could not be made; but it did appear from the evidence that the earnings exceeded the rental. Under these circumstances, the Central Transportation Company, anxious to avoid further delay by a re-reference to the Master, waived its claim for any excess of earnings, and the court limited, therefore, the decree to the valuation of the property at the time the lease was made, with interest from the date of the repudiation of the lease. Even if the allegation of the Pullman Company had been true and there had been any change of view on the part of the court, it must be remembered that the court was not bound to put the parties to the very great hardship of the delay which would be occasioned by a re-reference to the Master. The evidence was all before the court. It was not bound to call in a Master at all. It could always examine the evidence for itself and make a proper decree. The evidence here showed that the property of the Central Transportation Company, while not retaining its form, had as an element in the consolidated property increased and not diminished in value; and that the earnings of that property, not only during the lease, but afterwards, were largely in excess of the rental. While the exact figures could not be ascertained without a long and tedious account, there was sufficient evidence to show the above facts. Under such circumstances, it would have been idle to prolong this litigation, which had already lasted for so many years, when the court had before it evidence from which it was possible to make an equitable decree.

The rights of the parties in this court do not depend, however, upon whether the court below was consistent

or inconsistent, but upon the question whether under all the evidence in the case the Central Transportation Company is entitled to receive as compensation at least the sum awarded by the court. Fifteen years have elapsed since the repudiation of the lease, and eleven since the filing of the present bill. All the evidence which either side can obtain is before the court. If that evidence shows that the property when it last had a separate existence was worth at least the value fixed by the court, that as an element of the consolidated plant it had not diminished, but increased, in value, and that its earnings during the time both parties had carried out the lease had been greater than the rental paid, then there was no error in the decree of which the Pullman Company could complain. It may be well, therefore, to call attention briefly to what the evidence does show on these points.

1. *As to the character and value of the property at the time of lease.*

The Central Transportation Company was a pioneer company in the sleeping-car business. Starting in 1862 with a capital of $200,000, and with cars which bear the same relation to the present cars as the original locomotives bear to the modern ones, it had grown and prospered with the rapid development of the sleeping-car business until at the time of the lease its capital was $2,200,000. It was the owner of one hundred and nineteen cars, with their equipment, and of sixteen contracts with different roads, covering five or six thousand miles, and so connected as to form a system from the Mississippi to the Atlantic Ocean. It had about the same capital, and in many respects more valuable lines than its younger and more vigorous Western rival, the Pullman Company, although the latter company had more modern cars. It had an earning power as a separate plant of eleven and a half per cent. upon its capital. Some of its contracts were to continue during its incorporation, some were limited to the expiration of the patents, and some were for a term

of years, but the fact that they expired at different times rather added to their value, as no one road could afford to run its own sleeping cars or make a contract with a rival sleeping-car company if the connecting roads continued to use the Central Transportation Company's sleeping cars, the business of sleeping-car transportation being conducted over long lines often embracing several railroads, and the comfort of the passengers demanding continuous service. In fact, the existence of an established system of transportation secured by contracts with various connecting roads involved almost a certainty of the renewal of contracts. This is well exemplified by the testimony of Mr. Pullman himself (Record, page 203), to the effect that although at the expiration of the fifteen-year contract the Pennsylvania Railroad could have created a five per cent. car trust and built its own cars, it was willing, by reason of the advantages of the connection with other lines operated by the Pullman Company, to allow that company two per cent. more than the car trust interest.

The cars and contracts together formed a most valuable property, and this property could be sold and assigned by the Central Transportation Company. The latter company owned no railroad and had no right of eminent domain. It could assign or dispose of any of its property. It could not indeed deprive itself of the right to acquire other cars and contracts and agree to go out of business altogether, and it was because of covenants to this effect that the lease was held *ultra vires* and invalid. But that it could sell any or all of its cars and contracts just as a private individual could sell them cannot be disputed. In fact, many of the contracts had been originally made with private individuals and afterwards purchased by the company. The one hundred and nineteen cars and the existing contracts could therefore be sold separately or together, and that together they had a salable value was established by the evidence. The most important witness on this point was Adolphus Torrey. At the time of the lease he was assistant general superintendent of the Central Transportation Company, and after the lease he be-

came superintendent of the Central Division of the Pullman Company and retained that position until he left to become chief of the transportation bureau of the Centennial Exposition. At the time of the lease he made an inventory of the Central Transportation Company's cars and equipments for the Pullman Company, and for purposes of his own he made an estimate or appraisement of the whole property of the Central Transportation Company. He testified that the cars and contracts together were worth to any purchaser over $3,000,000 at the time of the lease, and this testimony the Pullman Company has not even attempted to contradict. Not a single witness for the Pullman Company testified that the cars and contracts together did not have a salable value, or that such value was less than the figure fixed by Mr. Torrey. His appraisement was corroborated by the fact that the property then had an earning capacity of over eight per cent. on this valuation. The Central Transportation Company contended that as Mr. Torrey was a gentleman of experience and of large knowledge of this particular property, his appraisement ought to be accepted in view of the fact that no evidence had been offered to contradict it. The Master, however, cut down the valuation to $2,552,000, the selling value of the stock. If there was error in this it was an error in favor of the Pullman Company, and the figure found by the Master is a minimum value.

The assertion of appellants that this value included the value of a franchise is entirely without foundation. It required no franchise to own and operate the cars and contracts. Any individual could do so, and they would be as valuable in the hands of an individual as in the hands of a corporation. In fact many of them had originally been owned by individuals or firms. After selling this property the Central Transportation Company could take the purchase money and establish a new plant in other territory by purchasing other cars and contracts. Such a transaction was no more illegal than the sale of the stock, goodwill and fixtures of a business by a proprietor who removes to another city and purchases another business.

What the Supreme Court held that the corporation could not do was to covenant that it would not engage in business and would keep its corporate existence only to receive the rents under a lease. The Master, however, in fixing a value has excluded any compensation for such a covenant, and both his figures and those of Mr. Torrey are based upon the selling value of the property alone.

2. *This value was a permanent value, not destroyed by the use of the property.*

The purchaser of the cars and contracts would not take a property which would as a business investment naturally disappear in a few years, and as to which, therefore, there would be a temporary income representing merely the return of the capital invested. Most of the contracts provided that the railroads should maintain the cars and renew worn-out parts, and in any event the equipment could readily be kept up out of the income; and with the prestige and the advantage of contracts with connecting roads there was a business certainty of renewal of the separate contracts from time to time as they expired, as well as the extension of the business by new contracts with other connecting roads as they were built. The business probability was not that the plant represented by the contracts and cars would diminish in value, but that both the salable value of the capital and the amount of income produced by it would steadily increase. Such had been the past history in the case of the Central Transportation Company. Such was the history thereafter of the consolidated plant resulting from the lease. That both parties considered this property as having a permanent value appears from the very terms of the lease. It was for ninety-nine years. It provided for renewal of cars and for the renewal of contracts and new contracts in the name of the Pullman Company but to the use of the Central Transportation Company, and provided that in case of termination of the lease these renewed or new contracts should be assigned to the Central Transportation Company.

3. *This valuable and, in a business sense, permanent property, consisting of cars and contracts, was absorbed and merged with the similar property of the Pullman property, so that while its value remained its identity was destroyed.*

On this point there is no conflict of testimony. The Pullman Company substituted from time to time its cars for the Central Transportation Company's cars. It sold or received compensation for Central Transportation cars and carried the funds into its treasury. It exchanged Central Transportation Company's contracts for new contracts in its own name. For two years it preserved the identity of the sleeping-car lines established by the old contracts by keeping them in a division called the Central Transportation Division, but after that time it established a new division, called the Central Division, containing most of the old lines, but containing also new lines which by the building of railroads and the extension of the business naturally appertained to that territory. From time to time also, with the growth of the business, existing lines were altered or extended, and when the lease was finally repudiated the identity of the plant leased had disappeared, not because it was destroyed or its value diminished, but because it had been merged and consolidated into one system, formed by the union of the two companies, a system which had thereby become more valuable and of a greater earning capacity than the two systems if owned and operated separately.

4. *The evidence conclusively showed that while the property lost its identity, its value as an element of the united property largely increased between the date of the lease and the date of repudiation.*

At the time of the lease the Central Transportation Company's property had an earning capacity of eleven and one-half per cent. per annum. The property of the Pullman Company had an earning capacity of about thirteen per cent. During the fifteen years of the lease the average net earnings of the united plants were over seven-

teen per cent. (see Pullman statement, Record, page 1112), showing that with the increased facilities given to the public the earnings of the united plants were greater than the aggregate of their separate earnings. And this state of things continued after 1885, as is shown by the last statement produced, viz., 1890 (Record, page 1123), in which the net earnings are seventeen per cent.

It was thus demonstrated that the union of the plants caused a large and permanent increase in the value of both. It might be said that this increase in value might have been all applicable to the western half or the original Pullman lines, but fortunately the evidence shows conclusively that of the two the Central Transportation plant was the most valuable element in the aggregation. It will be remembered that the Pullman lines were shut off from that extensive system of which the Pennsylvania Railroad and its affiliated lines, stretching from Chicago to the eastern seaports, formed the backbone, and which was covered by the Central Transportation Company's contracts. This system forms the bulk of what has always been called the Central Division of the united plant, and fortunately a record of the relative importance of this division has been preserved. On pages 884 to 894 of the Record will be found copies of the comparative statements kept on the Pullman books from 1875 to 1885, from which it will be seen that not only did the Central Division produce much the largest net revenue, but that it produced the largest net earning per car. It was thus demonstrated that not only was the Central Transportation Company's plant more valuable as an element of the united plant than it was as a separate plant, but that it remained during the lease the most valuable element in the combination.

There is another piece of evidence that throws some light upon the question of value. After the lease had been carried out by both parties for nearly fifteen years, the Pullman Company represented to the Central Transportation Company that there was about to take place a large diminution in profits, and that there ought, therefore, to be a diminution of rental. It was in consequence

of the negotiation which then ensued that the disagreement arose which resulted in the litigation. It was represented by the Pullman Company that from the Central Transportation Company's lines an income was being received by the Pullman Company of over $600,000 per annum, but that of this sum something over $400,000 per annum arose from the payment by the Pennsylvania Company of what was called mileage in lieu of the maintenance of the car bodies and trucks of the cars; that upon the renewal of the contract, the Pennsylvania Company would not pay this mileage, and that, as a consequence, the earnings from the Central Transportation Company's lines would fall to about $155,000; that of this sum about $89,000 would represent a fair payment to the Pullman Company for interest on increased capital, depreciation of cars, &c., leaving only $66,000 with which to pay the rental to the Central Transportation Company. This statement appears in the Record, pages 222-228, in the testimony of Mr. Pullman, as follows:—

I stated these facts to this committee, and I explained to them at the same time that under the existing contract the railroad company was paying the Pullman Company about $400,000 per annum mileage, or the amount it was assumed to cost to maintain the bodies and trucks of the cars, as the original contract made fifteen years ago provided that the railroad should do; that I was pretty well satisfied that Mr. Roberts would not make a new contract and pay any mileage, that therefore the net revenue resulting to the Pullman Company under any new contract that could be made probably would be decreased by at least that amount. * * *

Q. About the canceling the old $264,000 and agreeing to take a fair share. Was it at that interview that that was done, or was it at other interviews?

A. The interviews subsequent to that were altogether upon what we could do—what the fair share of the revenue would be and what it would probably be, and to fix an amount, they insisting on getting as great an amount of the estimated amount as possible. * * *

Q. Was anything said about a percentage—what percentage of the future earning should be paid?

A. No; I think not. I said at the outset that I would be willing to pay all the net revenue—all that the books would show the net revenue would be over and above our usual charge of interest and depreciation.

Q. Then what you were telling them you were willing to do was to

allow the whole of the net revenue after deduction of, I hardly gather exactly what?

A. After deducting what we deduct in our business, the interest upon capital and the depreciation of the cars.

Q. You did not mean to charge them interest upon their own capital, of course?

A. Interest upon capital we had put in.

Q. Your additional capital?

A. Yes, sir.

Q. That is what you stated to them as your idea of a fair share of the rental?

A. I think I stated all the time I was willing to give them more than a fair share of the rental.

Q. Not after they agreed to take a fair share?

A. I was willing to put it at the maximum; I wanted to make the arrangement, and I was willing to make a very liberal arrangement with them; and the figures that they investigated thoroughly showed that I was correct in that, and that the amount of $66,000, as I recollect it now, was a little more than $1000 or $2000, perhaps more, than the books showed the proper amount to be.

There was also produced a written memorandum, submitted by the Pullman Company to the Central Transportation Company, showing this alleged diminution of earnings. This memorandum is found on page 538 of the Record, and is as follows:—

COMPARATIVE STATEMENT OF EARNINGS AND EXPENSES OF CARS IN CENTRAL TRANSPORTATION COMPANY'S LINES ON BASIS OF ACCOUNTS FOR YEAR 1884.

Earnings of cars in Central Transportation lines during year:—		
Sleeping cars	$927,659 00	
Parlor cars	187,608 00	
		$1,115,267 00
Number of cars to operate lines, 192.		
Average earning per car, $5808.68.		
Average cost of maintenance of car body and trucks as per clearing house figures..	$2,421 00	
Average cost of maintenance of upholstery, bedding, and equipment and expenses for washing, conducting, operating supplies, &c.	2,579 00	
Average expense yearly	$5,000 00	
Total expenses, 192 cars		960,000 00
Net earnings, 192 cars		$155,267 00

Old Contract.

Maintenance of car body and trucks assumed by Pennsylvania Railroad Company, 192 cars at $2421.....		462,832 00
Total earnings and maintenance.....		$619,099 00
Per car, $3224.40.		
Less rental to Central Transportation Company.....		264,000 00
Balance		$355,099 00

New Contract.

Net earnings	$155,267 00	
Per car, $802.43.		
Less rental to Central Transportation Company	66,000 00	
Net income		89,267 00
Deficit as compared with old contract.....		$265,832 00

It will be observed that this statement purports to be based upon an average earning per car of $5808.68. When the renewal contracts with the Pennsylvania Railroad were produced, it was found that while it was true that the railroad company was relieved of the payment of mileage, that action was based upon the estimate that thereafter gross earnings per car of the Pullman Company would be $7500. The first renewal contract (printed in the Record, page 40) provided:—

Third.—The railroad company, as proper compensation for the maintenance of the running gear and bodies of said cars, as provided in the preceding article, hereby agrees to pay to the Pullman Company monthly mileage at the rate of three cents per mile for each mile run by said cars under the terms of this contract over the railroads embraced in the first article hereof, unless such cars shall hereafter have an average gross earning of $7500 or more per car per annum, in which event nothing shall be paid.

In the supplemental agreement (printed on page 52 of the Record) it was provided:—

And Whereas, It is believed by the parties, and the same is so assumed without further accounting, that all of the cars to be so operated under said agreement except those on the lines hereinafter stated, will earn an average of $7500 per car per annum;

AND WHEREAS, Certain other matters in connection with the subject of said agreement have agreed upon and are deemed proper o be evidenced by written agreement:

Now this Agreement Witnesseth, That the said parties hereto, in consideration of the premises and of the sum of one dollar by each to the other in hand paid, receipt whereof is hereby acknowledged, and their mutual covenants hereinafter set forth, do covenant and agree as follows:—

First.—That the third article of said agreement, hereinbefore recited, shall be held to be abrogated and of no effect as to all of the cars assigned or to be assigned, furnished or to be furnished, under the provisions of said agreement dated 26th of January, A. D. 1885, except only the cars upon the following sleeping-car lines, namely:—

1. The line between Philadelphia and Williamsport.
2. The line between Pittsburgh and Toledo.
3. The line between Pittsburgh and Indianapolis via Dayton.

That this expectation was substantially justified appears from the fact shown on pages 648 and 649 of the Record, that in the year ending July 31st, 1887, which was the first year after the renewal contract went into existence, the gross earnings per car in the Central Division, which was the division containing the Central Transportation Company's lines, was $7072.03. It requires only a moment's calculation to show that the increase of the gross earnings from $5808.68, the basis of the written statement, to $7072.03, the amount actually made, would raise the net earnings estimated in said statement, namely, $155,267, to $397,830, and after deducting the $89,267 allowed by the Pullman Company for interest on increased capital, depreciation, &c., would leave a sum of $308,561, or $44,561 in excess of the rental reserved to the Central Transportation Company by the lease.

The figures in the written statement submitted by the Pullman Company, already quoted, were incorrect, but they were incorrect in favor of the Pullman Company, and assuming them to be correct, which is the strongest position against the Central Transportation Company that can be taken, it would show that the only difference made by the renewal contract was that the Pullman Company, after being allowed everything it claimed for interest on increased capital, depreciation of cars, &c., was receiving

$44,000 in excess of the rental instead of between two and three hundred thousand dollars in excess of the rental. No stronger evidence of the value of this property could be produced than to show that upon the basis of the figures prepared by the Pullman Company, figures which certainly did not err against it, the property conceded by the Pullman Company to be in its hands at the date of the repudiation of the lease, as the property of the Central Transportation Company, was producing an income of over $300,000 after allowing for all interest on capital, depreciation, &c., claimed by the Pullman Company.

In connection with this statement made by the Pullman Company to the Central Transportation Company, it may be well to call attention also to the fact that at the time of making it, the Pullman Company offered to give to the Central Transportation Company not only $66,000 per annum thereafter, but the option to exchange Central Transportation stock for Pullman stock on the basis of four shares of Central Transportation stock, par fifty dollars, for one share of Pullman stock, par $100. This offer is found in the Record, page 154, and Mr. Pullman's account of it in the Record, page 227. The Pullman stock was then selling in the market from $112 to $114 (Record, page 228), and was really, as the annual statement on page 1113 of the Record shows, worth from $140 to $150, as the company had a surplus of $7,533,711.92 on a capital of $15,924,800 and was earning over sixteen per cent. per annum. Assuming it to be worth $140, the Pullman Company was offering $1,540,000 for the Central Transportation Company's plant, and that not because of the lease, since the Pullman Company then claimed the right to terminate the lease and the business had been long since absorbed and monopolized, but because of the intrinsic value of the Central Transportation Company's plant as an element of the Pullman system. The evidence showed that the revenues had not fallen, and that the plant was worth more than double the amount offered; but this offer is referred to as showing the absurdity of the position now taken by the Pullman Company, that in 1885, when it

made an offer equivalent to $1,540,000, the only property belonging to the Central Transportation Company consisted of a few worthless cars.

Enough has been said to show that although the Central Transportation Company's property had been so absorbed and merged in the consolidated plant that in 1885, the date of the repudiation, it could not be separately appraised, yet that it retained its value as an element of the consolidated plant of which it formed a part and shared more than proportionately in the increase in value which was shown to have taken place in the consolidated plant. If to-day the Central Transportation Company was awarded its proportionate share of the Pullman property with its assets of over $40,000,000 largely accumulated out of the earnings of the consolidated plant, its award would be many times the $2,552,000, awarded by the Master, and yet this proportionate share is what the Pullman Company has realized because of the lease, and under any award which the court can make, that company will be a gainer by its act in repudiating the lease. Had the lease continued to be carried out, the Central Transportation Company during the years which have been spent in litigation would have received all of the principal and most of the interest awarded by the Master, and would still have a property producing $264,000 per annum; and there is every reason to believe from the evidence, as to the character and earning capacity of the plant, that by prolonging the litigation for fifteen years the Pullman Company has made enough out of the earnings of the Central Transportation Company's lines above legal interest to enable it to pay the entire principal of the award. The hardship of the case to the Central Transportation Company is that although its plant, appraised by a competent expert, who is not contradicted by any witness called by the Pullman Company, at $3,000,000, was retained by the Pullman Company and continues as an element of the consolidated plant to earn a very large per cent., yet the Central Transportation Company is compelled to litigate for fifteen years, receiv-

ing in the meanwhile no income whatever from its plant, and being paid at the end simply the original value, with six per cent. interest. It may be said that it became a partner with the Pullman Company in an enterprise beyond the powers of either company, but even with the payment of the decree made by the court below, it obtains as its share of the dissolution of the enterprise the minimum value of its property, while the Pullman Company keeps the property and all its gains. No candid mind, after reading the evidence, can escape the conclusion so concisely expressed by Judge Dallas in his concurring opinion, that the award was "quite as favorable to the Pull-"man Company as upon any possible view of the facts and "the law can reasonably have been reached."

5. *Even if the court ought to reopen the executed part of the contract and take an account of rental and earnings, the evidence shows that the rental exceeded the earnings.*

It is clear that according to the principles of law laid down in St. Louis Bridge Co. *vs.* Terre Haute, &c., R. R., 145 U. S., 393, the Pullman Company was not entitled to be credited with any deficiency of earnings below rental. Assuming that the covenant of the Central Transportation Company not to engage in business was an invalid contract, yet the company had stayed out of business until the business had become so absorbed and monopolized that it could not be interfered with, and during the fifteen years of the lease the Pullman Company had received its consideration and paid its rent. It could not thereafter repudiate the contract and recover back the rental. It stood in a very different position from the other party, for it was the one who repudiated the lease. This distinction is clearly pointed out in St. Louis, &c., R. R. Co. *vs.* Terre Haute, &c., R. R. Co., *supra.* Assuming, however, that it was entitled to a credit for any excess of rental, it had the burden of showing such excess. It may be conceded that owing to the destruction of the identity of the property by merger the exact earnings could not

be shown, but their approximate value could have been shown by showing the earnings during the lease of the lines included in Central Transportation Company's territory. This has never been done. Instead of that the Pullman Company produced the statement which is referred to in the Master's report (Record, page 1181), and which shows an estimate of the earnings of lines up to the expiration date of the original contracts owned by the Central Transportation Company. As the Master reports that this table presents a nearer approach to a solution of the question than any other table produced, and as much importance has been given to it in the argument of counsel for appellant, it is important to understand just what it is. It will be recollected that the original contracts belonging to the Central Transportation Company expired at different dates, and that the lease contained a provision for their renewal, if possible, in the name of the Pullman Company, but to the use of the Central Transportation Company. At the time of the lease, and as part of the arrangement between the companies under which the lease was executed, a number of these contracts covering the Pennsylvania Railroad system was exchanged for a new fifteen-year contract between the Pullman Company and the Pennsylvania Railroad Company. Contemporaneous with the expiration of this contract came the quarrel between the Pullman Company and the Central Transportation Company and the repudiation of the lease by the former. During the whole of the fifteen years, therefore, in which the Pullman Company was paying rental under the lease, it was receiving earnings under the fifteen-year contract with the Pennsylvania Railroad for the operation of lines originally belonging to the Central Transportation Company.

In order to ascertain whether there had been any deficiency of earnings below rental, it would be necessary to state the earnings under this contract and the contracts with other railroads for the fifteen years and compare them with the rental during the fifteen years. Instead of that, the Pullman Company states the earnings of the

Central Transportation lines, including those covered by the Pennsylvania Railroad fifteen-year contract, but only to the expiration dates respectively of the original contracts, and then compares this with the rental for the whole of fifteen years, thus, of course, showing a deficiency. The table is found on page 919 of the Record, and it will be seen that earnings are given for only from four to twelve years respectively on the various lines, while, as appears from the Master's statement on page 1181 of the Record, the rental is deducted to January 1st, 1885, the whole fifteen years.

This table is erroneous in many other respects. The Pullman Company is allowed six per cent. depreciation on capital yearly and six per cent. interest on the whole capital without deducting the yearly depreciation, and the amount charged for depreciation is very much greater than the evidence justifies. Sufficient, however, has been said to show that the table presented no just comparison of earnings and rental, and the Pullman Company, although requested, did not show or produce any table showing the earnings over the Central Transportation Company's lines for the whole fifteen years which could be compared with the rental paid during the similar period.

An effort has been made in appellant's brief to show that the Pullman Company did not know what they were required to show, but this contention hardly merits a serious reply. The rental was paid from 1870 to 1885, viz., fifteen years. In order to compare rentals with earnings it was necessary to state earnings from the Central Transportation lines for the same period, viz., the fifteen years from 1870 to 1885. There could not be any doubt as to this, but if there had been, the written request of the Master, made soon after his appointment, asked the Pullman Company to produce "a statement of the earnings "of the various lines included in the Pullman lease between "February 17th, 1870, and February 17th, 1885." There was no ambiguity about this request, and the statement thus asked for was the only one which would enable any comparison of rental and earnings to be made. This

statement the Pullman Company has never produced, and the Master was entirely justified in reporting that "the "Pullman Company has failed, though requested by the "Master, to furnish him with such information as would, "he believes, have enabled him to state an account."

The failure of the Pullman Company to produce any statement which would allow a comparison of earnings and rentals during the fifteen years becomes unimportant, however, in view of another fact, clearly and positively shown by the evidence of Pullman's own witnesses, to wit, that whatever was the exact amount of the earnings during the fifteen years, they were more than the rental.

Attention has already been called to the fact that cotemporaneous with the lease, there was executed the fifteen-year contract with the Pennsylvania Railroad, and that it was not until the expiration of this contract that the Pullman Company claimed that the revenue had fallen below the rental so as to warrant a reduction under the lease. At that time the Pullman Company presented the written statement (already printed in full in this brief) in which it showed that at the close of the fifteen-year contract the net earnings to the Pullman Company was $619,099, out of which it was paying the rental to the Central Transportation Company, $264,000, and was keeping itself $355,099. (Record, page 538.) This was at the end of the fifteen-year period during which the lease was carried out. We have an equally conclusive record as to the earnings at the beginning. For a period of two years the Pullman Company kept a separate record of the earnings of the Central Transportation Company's lines (printed on page 896 of the Record), and this shows net earnings largely in excess of the rentals. We thus have the earnings both at the beginning and at the end of the lease largely exceeding the rental. With regard to the intervening time we have—

First.—The seventeen-year statement of the Pullman Company, found at page 1112 of the Record, showing that while there was some variation in the profits of the consolidated plant, there was, on the whole, a steady increase

in the earnings and a gradual accumulation of surplus from $120,667.13 in 1870 to $7,533,711.92 in 1884.

Second.—The separate accounts from 1874 to 1885 of the Central Division, which included the old Central Transportation Company's lines. These reports are found on pages 884 to 894 of the Record, and contain not merely the aggregate earnings, but the net earnings per car. They show that the Central Division was both as to aggregate revenue and average earning per car the most profitable division of the consolidated plant, and that there could have been no fall of revenue of the Central Transportation lines below $264,000. There are, it is true, two years between the time when separate accounts of the Central Transportation Company's lines were discontinued and the time when separate accounts of the Central Division were commenced, but these years, as is shown by the seventeen-year statement above referred to, were the most profitable years of the operation of the consolidated plant, yielding between twenty and thirty per cent. profit.

In addition to this testimony we have the testimony of Mr. Bird, one of the Pullman auditors (Record, page 872), as follows:—

Q. You, together with a force in your office, have been engaged for a number of months in examining the accounts of the operation by the Pullman Company of the lines originally belonging to the Central Transportation Company, have you not?

A. I have.

Q. You are therefore reasonably familiar with the results shown by those accounts?

A. I think so.

Q. It is true, is it not, that the operations of those lines in the year 1870, and subsequent years, as shown by these ledger accounts of the Central Transportation Company Division and the analytical statement books to which you have referred, show net results from the operations of those lines very largely in excess of the rental paid to the Central Transportation Company?

A. In excess, but not very largely. I should add that the analytical statement books to which you refer include very much other territory, so that whatever is shown by those analytical statement books would not refer wholly to the contracts in question.

That the earnings exceeded the rental during the fifteen years while both parties were executing the lease is thus shown—

1. By the fact that the Pullman Company never during that time asserted that the revenues had fallen or attempted to exercise the rights given by the lease in such case.

2. By the written statements of the Pullman C mpany purporting to show the exact earnings for the first two years and the last year of the period.

3. By the written statements of the Pullman Company showing the profits per car of the division containing the Central Transportation Company's lines, and that this division was the most profitable division of the consolidated plant.

4. By the written statement of the Pullman Company as to the aggregate earnings of the company.

5. By the testimony of the auditor of the Pullman Company.

In the light of this evidence it would seem impossible to doubt that the earnings exceeded the rental, and that no credit should be allowed on account of any deficiency.

In conclusion it may be well to briefly recapitulate the peculiar facts of this case—facts which the appellants in their argument persistently ignore—viz.:—

1. The Central Transportation Company was a large and prosperous company with a capital of $2,000,000 and an earning capacity of eleven and one-half per cent.

2. It had contracts and cars the value of which, irrespective of any franchise and irrespective of any covenant in restraint of trade, was, as the Master has found, $2,552,000, and as the evidence indicated, over $3,000,000.

3. From the then business point of view, since confirmed by results, the plant had not only a large income-producing capacity, but the prospect of a permanent continuance and constant increase of the value of its capital.

4. In entire good faith and for the purpose of consolidating its business with a corporation of about equal size, it leased its property to the latter for ninety-nine years.

5. The united plant proved to be extremely profitable, and yielded, and has continued to yield, a profit of sixteen or seventeen per cent. Each portion of the united system contributed by the respective companies has grown and prospered.

6. Its property was so merged and absorbed with and into the property of the other company that while its value remained its identity was destroyed.

7. At the end of fifteen years the other company, notwithstanding the enormous success of the united plants, insisted that the share of the Central Transportation Company in the united plant was only earning about three per cent., and offered it the choice of that income or an exchange of stock, which would give it in value about $1,500,000 for its property worth originally over $3,000,000.

8. When that offer was rejected and suit brought under the lease, the other company set up that the lease was invalid, and that it was only bound to return the property or its value, and asked the court to ascertain that value.

9. When the Supreme Court had sustained the invalidity of the lease, but with a plain intimation that the property or its value must be returned, the Pullman Company declined to return the property or make compensation, and sought to withdraw its bill.

10. The identity of the property having been destroyed, the only way in which the court could fix the value was to ascertain what was the value at the date of the lease and whether the subsequent history of the united plant showed

that this value as an element of the value of the whole had not been diminished.

11. The evidence fully established both the original value at the date of the lease and the continuance and enormous increase of that value as part of the increasingly valuable and profitable united system.

12. The evidence also established that the rental paid by the Pullman Company during the executed portion of the term of the lease was less than its receipts from the property.

13. After ten years of wearisome and exhausting litigation the net result is that the Pullman Company remains the sole owner of the united plant with its increased value and great income-producing capacity, while the Central Transportation Company is awarded the minimum value of its plant with six per cent. interest from the date of repudiation. In other words, the Pullman Company is allowed to purchase as of 1885 at a reduced value, and to practically pay for it out of the difference between the six per cent. interest and the sixteen per cent. profits during the litigation.

It is submitted that no more meritorious case was ever submitted to a Chancellor. The Central Transportation Company is not seeking to set aside the decision of the Supreme Court; on the contrary, it acquiesced in it by filing its cross bill. All it asks is that the opinion of the Supreme Court shall be carried out, and that its declaration in that opinion, that

"the courts while refusing to maintain any action upon the unlawful "contract, have always striven to do justice between the parties so far "as could be done consistently with adherence to law, by permitting "property or money parted with on the faith of the unlawful contract "to be recovered back or compensation to be made for it,"

shall be given practical effect by a decree. This is the position of the Central Transportation Company. The

position of the Pullman Company is expressed in the paragraph with which it closes its brief, viz.:—

"But we insist that the cross defendant is not amenable to the de-
"mands of the cross bill. The contract of lease and the acts of the
"cross complainant create a situation in which, under their settled
"rules, the courts of the United States refuse to interfere, but leave
"parties where they have placed themselves. They decline to interfere
"for either party when contracts are void because of vicious or im-
"moral covenants or considerations, and covenants are of that class
"which are void for restraint of trade or other flagrant violation of
"public policy."

There can be little doubt which proposition is in accordance with good morals or which most appeals to the enlightened conscience of a Chancellor. There can be as little doubt as to which is in acordance with "the obliga-
"tion to do justice" which the Supreme Court, in the cases cited in the brief, has declared "rests upon all persons,
"natural and artificial." It is submitted upon the authorities cited that the legal decisions are in acordance with, not contrary to, the moral obligation, and that whatever gain the Pullman Company has made by setting up the illegality of its own contract, it is at least bound to restore the property of the Central Transportation Company or its fair value.

FRANK P. PRICHARD,
JOHN G. JOHNSON,
For Appellee.

Since the foregoing brief was prepared and printed, the appellant's brief has been received. A few comments upon that brief are therefore added.

Appellee agrees that aside from the questions of jurisdiction the principal question is the legal effect to be given to the judgment of this court as applied to the facts disclosed by the evidence. If this court has held, as appellant contends, that a party to a contract can set up its invalidity, not only as a defense to a suit on the contract itself, but as a justification for keeping without compensation all the property of the other party to the contract which has been delivered to it under the terms thereof, then the Central Transportation Company must suffer the confiscation of all its property, although it acted with honest intent and under the advice of eminent counsel. If, on the other hand, this court has held, as contended for by appellee, that although a party to a contract may set up its invalidity as a defense to any action upon it, he cannot, because of such invalidity and his repudiation of the contract, confiscate the property of the other party, and that the court will always do justice between the parties and compel return of, or compensation for, property received by the repudiating party, then the decree in this case was just and should be affirmed.

So much of appellant's brief as deals with this legal question and with other minor questions of law in the case has already been fully answered in the foregoing brief. Appellant's discussion of the facts, however, requires some notice.

There are two striking features of appellant's brief, viz.: There is no clear and concise statement of the facts upon which the questions of law arise and there is an attempt to overthrow the findings of the court below on questions of fact by violent invective against the judge who delivered the opinion. Throughout the whole brief there is a persistent attempt to represent the court below as endeav-

oring to "evade" or "disregard" the decision of this court as to the validity of the lease. This is the more extraordinary since the decision that the lease was invalid was a decision of the very judge who delivered the opinion in the present case, and it was this court's affirmance of his decision that he is now accused of "evading" or "dis-"regarding." The absurdity of this is so apparent that further comment would seem to be unnecessary.

In reading the various statements in appellant's brief as to the evidence—statements often couched in vehement and extravagant language—it must always be remembered that where a party to a cause attacks a finding of fact or a report of evidence by a Master or a lower court, the burden is on him to clearly prove that the finding or report is not correct. Every presumption is in favor of the finding of the court.

It is impossible, without extending this brief to undue length, to point out all the inaccuracies as to evidence in appellant's paper book, but a few examples will suffice.

On page 75, in speaking of the Act of 1870, as to which the Master (Record, page 1141) reported that it was drawn by counsel for the purpose of obtaining legislative authority for the lease, appellant says: "No evidence whatever "shows that the statute was procured for the express pur-"pose of granting such authority." The fact is that the uncontradicted testimony of appellant's own witness directly sustains the Master's finding.

Mr. W. J. Howard, formerly general solicitor of the Pennsylvania Railroad, a witness called by appellant, testified (Record, pages 724, 725):—

Q. Did you not, in order to enable Mr. Pullman to lease the Central Transportation Company's cars and contracts, draft a special Act of Assembly authorizing the Central Transportation Company to do that?

A. I did.

Q. And that is the Act of 1869, is it not?

A. I presume that is the date; 1870 the Act is.

Q. But that is the Act, is it not?

A. I think it is.

Q. Was not the object of that Act to enable the Central Transportation Company to turn over its cars and contracts, in order that the Pullman Company might be enabled to make contracts with the Pennsylvania Railroad?

A. It was.

Q. That was your purpose in drafting it? I will repeat my former question: Was not the object of that Act to enable the Central Transportation Company to turn over its cars and contracts, in order that the Pullman Company might be enabled to make contracts with the Pennsylvania Railroad?

A. The purpose of it was just as is specified in the Act itself. My recollection is that the charter of the company had but a short time to run. I think twenty years was the limit originally; I think it extended that. There was no authority for the leasing of their property—leasing, hiring or transferring; and this was drawn for the purpose of enabling them to extend their charter and hire and lease their property.

Q. And then, having drafted and having that Act passed, you then drew a contract between the Central Transportation Company and the Pullman Company?

A. The Act is dated February 9th, 1870, and the lease is dated the 17th of February, 1870.

Q. You drew that lease in conjunction with Pullman's counsel, did you not?

A. Yes, I did; the Act I notice—the question is decided in the preamble of the lease.

It is boldly alleged on page 88 of appellant's brief that the alleged substantial and permanent character of the Central Transportation Company's plant was fictitious, and that there was in fact "no such plant and no such "value." When it is remembered that this is spoken of a company which was at that time the equal of the Pullman Company, with larger capital, with equal earnings, with poorer cars, but with richer and more profitable territory, the recklessness of such a statement is remarkable, and when this statement is compared with the careful report of the Master (Record, page 1133) setting forth in detail the character and value of the plant, it will be at once seen how absolutely at variance with the evidence the statement is.

One of the most important and remarkable inaccuracies of appellant's brief is in the statement often repeated that the Pullman Company answered every call of the Master, and that the court below on the argument of the exceptions to the Master's report shifted its ground, and without any evidence arbitrarily assumed that the earnings were equal to the rental, and thus decided a material point adversely to the Pullman Company, without any evidence and without the opportunity to produce proof. Nothing could be further from the real facts. The original opinion of the court required a comparison of the earnings and rental during the fifteen years in which rent was paid under the lease. The Master accordingly called for a statement of the earnings during those fifteen years. There could be no possible mistake as to this call. It was obvious that as the one factor, namely, fifteen years' rental, was known, it was necessary to have the other factor, namely, fifteen years' earnings. This statement the Pullman Company never produced. It obtained weeks of delay before the Master to prepare statements which, when produced, were always for periods less than the fifteen years, so that no accurate comparison could be made. At the time of the lease various contracts covering the Pennsylvania system, in the name of the Central Transportation Company, were exchanged for a fifteen year contract in the name of the Pullman Company. The earnings under this contract would have been for the same time as the rental, and could have been compared with the latter, but instead of giving a statement of these earnings under this contract for the fifteen years, the Pullman Company made up hypothetical statements of what would have been the earnings under the various old contracts expiring at different periods within the fifteen years. The result of comparing fifteen years' rental with much less than fifteen years' earnings was always to bring the Central Transportation Company in debt, and this is the way in which the statement alluded to by the Master on page 1181 of the Record is made up. The Record will be searched in vain for any statement produced by

the Pullman Company showing the earnings during the fifteen years in which the rentals were paid. When, therefore, the case came before the court upon the report of the Master, there was no statement of fifteen years' earnings which could be compared with the statement of fifteen years' rentals. There was, however, abundance of evidence that the earnings of the Central Transportation lines during the fifteen years exceeded the rentals. This evidence has been already pointed out on pages 89-91 of this brief. The court did not arbitrarily assume that the earnings equalled the rental, but found this fact from evidence, and as the Central Transportation Company did not ask for a decree for the excess of earnings, a reference back to the Master was unnecessary.

The truth is that there is no real conflict of evidence or any substantial dispute as to the facts. The Central Transportation Company possessed a plant worth at least the value reported by the Master. It consolidated with the Pullman Company by means of a lease. The two plants were so thoroughly consolidated that identification became impossible, but the evidence fully established that as an element of the consolidation, the plant of the Central Transportation Company increased rather than diminished in value, and continues to be the most profitable portion of the consolidated plant. While the lease was executed by both parties, the receipts exceeded what was paid to the Central Transportation Company. What other relief can be given except to give the original value, leaving to the Pullman Company all the plant with its magnificent earning power and its ever-increasing business? The appellant calls this "unmitigated pillage." To the able judge who delivered the concurring opinion in the court below, it seemed but scant justice, and this, it is submitted, is the impression which would be left on the mind of any dispassionate reader of the evidence.

FRANK P. PRICHARD,
JOHN G. JOHNSON,
For Central Transportation Company.

In the Supreme Court of the United States.

Pullman's Palace Car Company, Appellant,	October Term, 1895.
vs.	No. 922.
Central Transportation Company, Appellee.	Record No. 16,212.

The Central Transportation Company, appellee, respectfully moves this Honorable Court to advance this case on the docket so that it can be heard at the present session.

Frank P. Prichard,
John G. Johnson,
For Appellee.

PETITION IN SUPPORT OF MOTION.

To the Honorable the Chief Justice and Associate Justices in the Supreme Court of the United States:

The petition of the Central Transportation Company, appellee in the above case, respectfully represents:—

That there are special and peculiar circumstances attending this case which your petitioner desires to present to this court as grounds for a motion to advance the case and hear it at this term of court.

That the bill was filed in this case by the present appellant on the fifteenth day of April, 1887.

That the appellant was the lessee from the appellee of property which has been found by the Master and court in this

cause to be of the value of $2,552,000, and was in the possession of this property at the time of the filing of the present bill.

That the said property constituted almost the entire assets of the appellee, and that the bill was filed by the appellant, *inter alia*, to have the court decree what compensation it should pay to the appellee for the retention and conversion of said property, it being alleged that the lease was invalid.

That the proceedings in this case have, without the fault of the appellee, been greatly protracted. A large amount of testimony has been taken, hearings have been had upon motions to withdraw the bill, upon demurrers to a cross bill, upon final hearing before reference to a Master and upon exceptions to the Master's report; so that it is now nearly ten years since the commencement of the proceedings, during all of which time the stockholders of the appellee, the Central Transportation Company, have been deprived of all income from the said property, while the appellant has had, and is continuing to have, the use of the same.

That there is involved in the present case a question as to the jurisdiction of this court upon appeal, which question has been submitted on briefs and has been postponed by this court for consideration until final hearing.

That another appeal has been taken by the present appellant to the Circuit Court of Appeals for the Third Circuit, the consideration of which has been postponed by that court until after the decision by this court of the questions raised upon this appeal.

That if this court shall decide, upon final hearing, that it has not jurisdiction to entertain the appeal, there will be a fresh delay before the case can be finally heard by the Circuit Court of Appeals for the Third District.

That the delay incident to legal proceedings has been such in this case as to work incalculable hardship upon the stockholders of appellee, and to amount in some cases almost to confiscation of property.

Under these circumstances the Central Transportation Company, appellee, respectfully prays this court to make an order

advancing the case on the docket, so that it can be heard at the present session.

And your petitioner will ever pray, &c.

CENTRAL TRANSPORTATION COMPANY,
BENJAMIN P. OBDYKE,
President.

[SEAL]

Attest:
F. WECKERLY,
Secretary.

CITY OF PHILADELPHIA, *ss.*

Frank Weckerly, being duly sworn, says: I am Secy & Treas. of the Central Transportation Company. The matters set forth in the foregoing petition are true to the best of my knowledge and belief.

FRANK WECKERLY.

Sworn and subscribed to before me, this nineteenth day of January, A. D. 1897.

GEORGE HOUSE,
Notary Public.

[SEAL]

Syllabus.

171 138
173 112

171 138
L-ed 108
174 567
d174 609
175 59
175 100
f176 633

171 138
L-ed 108
e177 500
d941 597

171 138
L-ed 108
105 f 222

171 138
43 L-ed 108
112 f 701

171 138
43 L-ed 108
115 f 956

171 138
43 L-ed 108
s 18 SC 808
117 f 555
118 f 820
119 f 807

PULLMAN'S PALACE CAR COMPANY *v.* CENTRAL TRANSPORTATION COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FROM THE EASTERN DISTRICT OF PENNSYLVANIA; AND ALSO CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

No. 141. Argued March 24, 25, 1898.— Decided May 31, 1898.

By taking an appeal to the Circuit Court of Appeals the Pullman Company did not, under the peculiar circumstances of this case, waive its right to appeal to this court, and the case being now before this court either on appeal or by the writ of certiorari, it has jurisdiction.

In order to authorize a denial of a plaintiff's motion to discontinue a suit in equity, there must be some plain legal prejudice to the defendant, other than the mere prospect of future litigation, rendered possible by the discontinuance.

Unless there be an obvious violation of a fundamental rule of a court of equity, or an abuse of the discretion of the court, the decision of a motion for leave to discontinue will not be reviewed here.

The decision of the Circuit Court in denying the motion of the Pullman Company to discontinue its suit was right, as was also its decision permitting the Central Company to file a cross bill.

In no way, and through no channels, directly or indirectly, will courts allow an action to be maintained for the recovery of property delivered under an illegal contract, where, in order to maintain such recovery, it is necessary to have recourse to that contract; but the right of recovery must rest on a disaffirmance of the contract, and is permitted only because of the desire of courts to do justice, as far as possible to the party who has made payment or delivered property under a void agreement, which in justice he ought to recover, and no recovery will be permitted which will weaken said rule founded upon the principles of public policy.

Acting upon those settled principles the court decides:

(1) That the Central Company is entitled to recover from the Pullman Company the value of the property transferred by it to that company when the lease took effect, with interest, as that property has substantially disappeared, and cannot now be returned;

(2) That the value of that property is not to be ascertained from the market value of the shares of the Central Company's stock at that time, but by the value of the property transferred;

(3) That the value of the contracts with railroad companies transferred by the Central Company form no part of the sum which it is entitled to recover;

Statement of the Case.

(4) That the same principle applies to the patents transferred which had all expired;

(5) That it is not entitled to recover anything for the breaking up of its business by reason of the contracts being adjudged illegal.

THE record in this case shows that in 1870 the Central Transportation Company, hereafter called the Central Company, was a corporation which had been in 1862 incorporated under the general manufacturing laws of the State of Pennsylvania. It was engaged in the business of operating railway sleeping cars and of hiring them to railroad companies under written contracts by which the cars were to be used by the railroad companies for the purpose of furnishing sleeping conveniences to travellers. The corporation at this time had contracts with a number of different railroad companies in the East, principally, but not exclusively, with what is known as the Pennsylvania Railroad system, and it had been engaged in its business with those companies for some time prior to 1870. In the year last named the Pullman's Palace Car Company, hereafter called the Pullman Company, was a corporation which had been incorporated under the laws of the State of Illinois. It was doing the same general kind of business in the West that the Central Company was doing in the East. For reasons not material to detail, the two companies entered into an agreement of lease, which was executed February 17, 1870.

By its terms the Central Company leased to the Pullman Company its entire plant and personal property together with its contracts which it had with railroad companies for the use of its sleeping cars on their roads, and also the patents belonging to it. The lease was to run for ninety-nine years, which was the duration of the charter of the Central Company.

It was also agreed that the Central Company would not engage in the business of manufacturing, using or hiring sleeping cars while the contract remained in force.

In consideration of these various obligations, the Pullman Company agreed to pay annually the sum of $264,000 during the entire term of ninety-nine years, in quarterly payments, the first quarter's payment to be made on the 1st of April, 1870.

From the time of the execution of the contract its terms were carried out, and no particular trouble occurred between the companies for about fifteen years. During this time and up to the 27th day of January, 1885, the Pullman Company paid to the Central Company, as rent under the contract, the sum of $3,960,000, without any computation of interest. About or just prior to January, 1885, differences arose between the companies. The Pullman Company claimed the right to terminate the contract under the eighth clause thereof, or else to pay a much smaller rent. The merits of the controversy are not material.

The two companies not agreeing, and the Pullman Company refusing to pay the rent stipulated for in the lease, the Central Company brought successive actions to recover the instalments of rent accruing. In one of them the Pullman Company pleaded the illegality of the lease, as being *ultra vires* the charter of the Central Company. The plea prevailed in the trial court, and upon writ of error the judgment upholding this defence was, in March, 1891, sustained in this court. *Central Transportation Company* v. *Pullman's Car Company*, 139 U. S. 24.

After the bringing of several actions for instalments of rent by the Central Company and before the question of *ultra vires* had been argued in this court, the Pullman Company on the 25th day of January, 1887, commenced this suit by the filing of its bill against the Central Company in the Circuit Court of the United States for the Eastern District of Pennsylvania. The bill asked for an injunction to restrain the bringing of more suits for rent. It gave a general history of the transactions between the companies from the execution of the contract between them in February, 1870, down to the time of the filing of the bill, and it alleged the election of the Pullman Company to terminate the lease under the provisions of the eighth clause thereof, and the willingness of the company to pay what should be found by the court to be equitable and right to the Central Company on account of the property which had been transferred by that company to it, and to this end it prayed the aid of the court. The bill also contained the following allegation:

"And your orator shows that in said lease it is recited that the said contract of lease is made on the part of the defendant, the said Central Transportation Company, under an act of the general assembly of the Commonwealth of Pennsylvania therein named, approved the 9th day of February, A.D. 1870, a copy whereof is hereto attached, marked Exhibit G, and referred to as part of this bill; but your orator is advised, and therefore submits it to the court, that the said lease being a grant, assignment and transfer of all the property, contracts and rights of the said defendant, the Central Transportation Company, and including a covenant on the part of said defendant corporation not to transact during the existence of said lease any of the business for the transaction of which it was incorporated, was never legally valid between the parties thereto, but was void for the want of authority and corporate power on the part of the defendant to make the said contract of lease, and because the same was in violation of the charter conferring the corporate powers of said defendant, and of the purpose of its incorporation, as by the said charter, to which, for greater certainty, reference is made, your orator is advised it will appear; that the said contract of lease was never susceptible of being enforced in law by your orator against said defendant, and cannot therefore be construed and held to continue in force and obligatory upon your orator; and that your orator can be under no other legal obligation or equitable duty to the defendant than to return such of the property assumed to be demised as is capable of being returned, and to make just compensation for such other of the said property as under the said contract of lease it ought to make compensation for, which it is willing and now offers to do."

In the prayer for relief it was also asked —

"That the court may consider and decree whether said contract of lease was not made without authority of law on the part of the defendant and in excess of its corporate powers and in violation of its corporate duties, so as not to be enforceable against your orator beyond the obligation of your orator to make return of or just compensation for the property

demised; and that an account may be taken between your orator and defendant, and that the amount may be ascertained that should be paid by your orator to the defendant on any account whatever; . . . and that an accounting may be had between your orator and defendant as to all the matters and things set out in this bill."

The Central Company answered the bill, denying many of the material allegations therein contained. It denied that the Pullman Company had ever elected to terminate the lease under the provisions of the eighth clause thereof, and it alleged that the lease was still in existence, and that it had the right to recover from the Pullman Company the amount of the rent named in the lease, and that no valid agreement had ever been made between the companies in any way altering the lease or reducing the amount of the rent payable thereunder. It denied that the lease was illegal, and it alleged that even if it were, the illegality did not justify the complainant in applying for any equitable relief whatever.

Upon application on the part of the Pullman Company the court granted an injunction restraining the bringing of suits for the collection of rent accruing after July, 1886, but it declined to enjoin those already pending for rent accruing before that date.

After considerable proof had been taken upon the issues involved in this suit and after the decision of the other case in this court, in March, 1891, holding the lease illegal and void, the complainant herein, on the 25th of April, 1891, applied to the court for leave to dismiss its bill at its own cost. This application was opposed by the defendant, who, on the same day, moved for leave to file a cross-bill, in which it said it would avail itself of the tenders of relief made by the complainant in its bill, and that it would pray such relief in its cross-bill as might be pertinent to the case made by the bill. In December, 1891, complainant's motion for leave to dismiss its bill was denied, and the defendant's motion for leave to file a cross-bill was granted. Thereupon the cross-bill was filed, in which the Central Company acknowledging, under the decision of this court, that the lease in question was void,

claimed to avail itself of the tenders made in complainant's bill upon the subject of the return of its property and compensation for that which it was impossible to return, and claimed, among other things, that the Pullman Company should account for all the profits which it had derived since the making of the lease by the use of the property transferred to it under the agreement, and that the amount found due should be paid to the Central Company, and that the Pullman Company should be adjudged to be a trustee for the Central Company of all the contracts for transportation, whether original, new or renewals, held by the Pullman Company with railroad companies with which there were contracts of transportation with the Central Company at the time of the making of the lease in February, 1870, and that the Pullman Company should be adjudged to pay the Central Company all such sums as should be due to it by the Pullman Company as such trustee, and that defendant should in the future from time to time account for the sums which should be due by reason of future operations under those contracts. It also prayed for a discovery and an accounting by the Pullman Company of its use and disposition of the property turned over to it by the Central Company.

To this cross-bill the Pullman Company filed three demurrers, the first being a general demurrer on the ground that the cross-bill was filed contrary to the practice of the court, and also that it appeared that the court had no jurisdiction of the case; the second demurrer related to the portions of the cross-bill praying that the cross-defendant might be regarded as a trustee and decreed to account accordingly; the third demurrer related to that part of the cross-bill which asked for an account of profits since the making of the lease and for future profits.

The demurrers were overruled with leave to present the questions on final hearing, and the Pullman Company then answered the cross-bill. Among other things it set up that the agreement in question was void, "and that being null and void between the parties hereto because of such character of the agreement, it cannot be made the lawful foundation of any

action or application for any relief whatever between the parties thereto. And this respondent submits that the rule which precludes the granting of relief by any court of either equity or law, upon a contract void for contravention of public policy, forbade this Circuit Court to allow such affirmative relief upon this cross-bill which asserts no claim of right not founded directly upon the express undertakings of this contract of lease, held void by this court itself and by the Supreme Court for the reasons aforesaid." The Pullman Company therefore denied that it owed any duty to the cross-complainant, which was enforceable at law or equity, to return to the Central Company the property assigned under the lease or to account for any profits derived under and by reason of any property delivered to it under the agreement.

Testimony was taken under these pleadings, and the case came before the Circuit Court for final hearing, and that court held that the cross-complainant made out a case for an accounting by the cross-defendant for the value of the property when received, together with its earnings since, less the amount paid as rent. The court, therefore, referred it to a master for the purpose of ascertaining the facts, with directions to report within the time named in the order of reference. Under this order testimony was taken and the master reported in favor of the Central Company, and the exceptions filed having been overruled, judgment was entered in favor of the Central Company for the sum of $4,235,044, together with costs. From this judgment the Pullman Company appealed directly to this court. It also appealed to the Circuit Court of Appeals. The case was there argued upon a motion to dismiss the appeal, and the motion denied, and the further argument was postponed until some disposition was made of the appeal taken directly to this court. 39 U. S. App. 307. A motion has also been made to this court to dismiss the appeal, and thereupon an application was made to us for a writ of certiorari to the Circuit Court of Appeals for the Third Circuit, and on account of the peculiar circumstances it was granted, and the record has been returned to this court by virtue of that writ.

Mr. Edward S. Isham and *Mr. Joseph H. Choate* for appellant. *Mr. A. H. Wintersteen* and *Mr. Robert T. Lincoln* were on their brief.

Mr. Frank P. Prichard and *Mr. John G. Johnson* for appellee.

Mr. Justice Peckham, after stating the facts, delivered the opinion of the court.

The motion to dismiss the appeal in this case is now before the court.

Counsel for the Pullman Company took the appeal directly from the Circuit Court to this court on the theory that the case involved the construction or application of the Constitution of the United States, because of the holding of the court below that the cause of action alleged by the Central Company in its cross-bill was, under the circumstances, a proper subject of equitable cognizance, and counsel claimed it was really nothing but a legal cause of action in regard to which the cross-defendant was entitled to a trial by jury under the Constitution of the United States. There being room for doubt in regard to the soundness of such contention, the counsel also took an appeal to the Circuit Court of Appeals, and we think that by this action he did not waive any right of appeal which he would otherwise have had. Whichever route may be the correct one, either directly from the Circuit Court or through the Circuit Court of Appeals, it is unnecessary to decide, because the case is now properly before us either by appeal or by writ of certiorari, and we therefore proceed to determine it upon the merits.

The Pullman Company, complainant in the original suit, insists that it had the right to discontinue that suit at its own cost before any decree was obtained therein, and the refusal of the court below to grant an order of discontinuance upon its application is the first ground of objection to the decree herein.

The general proposition is true that a complainant in an

equity suit may dismiss his bill at any time before the hearing, but to this general proposition there are some well recognized exceptions. Leave to dismiss a bill is not granted where, beyond the incidental annoyance of a second litigation upon the subject-matter, such action would be manifestly prejudicial to the defendant. The subject is treated of in *Detroit* v. *Detroit City Railway Company*, in an opinion by the Circuit Judge, and reported in 55 Fed. Rep. 569, where many of the authorities are collected, and the rule is stated substantially as above. The rule is also referred to in *Chicago & Alton Railroad* v. *Union Rolling Mill Co.*, 109 U. S. 702.

From these cases we gather that there must be some plain, legal prejudice to defendant to authorize a denial of the motion to discontinue; such prejudice must be other than the mere prospect of future litigation rendered possible by the discontinuance. If the defendants have acquired some rights which might be lost or rendered less efficient by the discontinuance, then the court, in the exercise of a sound discretion, may deny the application. *Stevens* v. *The Railroads*, 4 Fed. Rep. 97, 105. Unless there is an obvious violation of a fundamental rule of a court of equity or an abuse of the discretion of the court, the decision of a motion for leave to discontinue will not be reviewed here.

Upon an examination of the facts relating to the motion, we think the Circuit Court was right, in the exercise of its discretion, in denying the same. The original bill was framed really on two theories: One, that by reason of an election made under the eighth clause in the lease, the Pullman Company had terminated the lease, and it was therefore bound under its provisions to return the property which it had received from the Central Company. It stated in its bill the impossibility of returning a large portion of the property which it had received; it announced its willingness to make substantial performance of its contract contained in the lease, and it asked the court to aid it therein by decreeing exactly what it should do for the purpose of carrying out equitably and fairly its obligations incident to its termination of the lease under the clause above mentioned. The other theory rested upon what

was a substantial allegation of the invalidity of the lease as having been made without authority of law, and therefore in violation of the corporate duties of the Central Company, and on that account not enforceable against the Pullman Company beyond the obligation of the latter company to make return of just compensation for the property demised. Upon that theory the bill asked, not that the court should set aside or cancel the lease, but that it should aid the parties by decreeing just what relief should be given by the complainant to the lessor in the execution of its duty to make some compensation for the property it received and which it stated its willingness to make, and to that end, that an accounting might be had and the amount ascertained that should be paid to the Central Company in discharge of the obligations of the complainant in that behalf. Thus the Pullman Company came into a court of equity and in substance alleged that the lease had been terminated by it under the eighth clause, and it also alleged that the lease was void as *ultra vires*, and in either event it tendered such relief as the court might think was proper and fair under the circumstances.

A large amount of proof had been taken under the issues made in this original bill and the answer thereto, and before the case was concluded the decision of this court was made in which the lease was declared to be void. The only obligation left under the original bill of complainant after the decision of this court, was the obligation to return such portion of the property received by it as the court should determine to be right, or to make some compensation to the Central Company for the same. And this obligation it had offered in the original bill to carry out.

The Pullman Company had also obtained an injunction in the original suit, restraining the Central Company from commencing further legal proceedings to recover rent under the lease, and after obtaining this injunction and taking the testimony relating to the subject-matter of the original bill, the complainant should not be permitted under these circumstances to dismiss that bill and thus withdraw the whole case from the jurisdiction of the court, and thereby blot out

its tenders of relief contained in its original bill grounded, among others, upon the allegation that the lease was void, and asking the aid of the court to decree the precise terms upon which its obligations to the Central Company might be fulfilled.

The denial of the motion was made in connection with the application of the Central Company to file a cross-bill in which it would seek to avail itself of the tenders made by the Pullman Company in the original bill. Such an application for leave to file a cross-bill seeking affirmative relief while at the same time availing itself of those tenders of relief made by the original complainants, would furnish additional ground for the exercise of the discretion of the court in refusing to grant the application for leave to discontinue. We think there was no error committed by the court below in refusing the leave asked for.

The further objection is made by the counsel for the Pullman Company that it was error to allow the cross-bill to be filed in this case. Counsel for the Pullman Company assert that the cause of action for a return of the property is a purely legal one of which a court of equity has no jurisdiction, and that it can acquire none simply by the filing of a cross-bill. Whatever may be the original character of the liability of the Pullman Company to return or make compensation for the property, we are of opinion that under the facts above set forth it cannot object to the filing of the cross-bill, or to the determination of the amount of its liability by a court of equity. It had itself voluntarily appealed to the jurisdiction of such a court for the purpose of obtaining its aid in decreeing the terms upon which its obligations to the Central Company might be fulfilled and the lease terminated, either under the eighth clause in the lease or because of its invalidity as being *ultra vires*. Having thus appealed to equity for its aid and the lease having been conclusively determined to have been void, we think it was within the fair discretion of the court to retain jurisdiction of the cause and of the original complainant, and to permit the filing of a cross-bill in which the cross-complainant might seek affirmative relief, and at the same time

avail itself of the tenders made by the complainant in its original bill.

The facts which were set up in the cross-bill closely affected one of the theories upon which the original bill was filed, viz., the invalidity of the lease. They were relevant to the matters in issue in the original suit, and in seeking affirmative relief the cross-complainant is but amplifying and making clearer the foundations for the intervention of equity which had been appealed to by the Pullman Company, and the continued intervention of which would greatly speed a final termination of all matters for litigation between the parties. The court below did not err in permitting the cross-bill to be filed.

This brings us to a discussion of the principles upon which a recovery in this case should be founded. The so called lease mentioned in this case has been already pronounced illegal and void by this court. 139 U. S. 24. The contract or lease was held to be unlawful and void because it was beyond the powers conferred upon the Central Company by the legislature, and because it involved an abandonment by that company of its duty to the public. It was added that there was strong ground also for holding that the contract between the parties was void because in unreasonable restraint of trade, and therefore contrary to public policy. In making the lease the lessor was certainly as much in fault as the lessee. It was argued on the part of the Central Company that even if the contract sued on were void, yet that having been fully performed on the part of the lessor and the benefits of it received by the lessee for the period covered by the declaration in that case, the defendant should be estopped from setting up the invalidity of the contract as a defence to the action to recover compensation for that period. But it was answered that this argument, though sustained by the decisions in some of the States, finds no support in the judgments of this court, and cases in this court were cited in which such recoveries were denied.

It is true that courts in different States have allowed a recovery in such cases, among the latest of which is the case of *Bath Gas Light Co.* v. *Claffy*, 151 N. Y. 24, where Chief

Judge Andrews of the Court of Appeals examines the various cases, and that court concurred with him in permitting a recovery of rent upon a void lease where the lessee had enjoyed the benefits of the possession of the property of the lessor during the time for which the recovery of rent was sought.

But in the case of this lease, now before the court, a recovery of the rent due thereunder was denied the lessor, although the lessee had enjoyed the possession of the property in accordance with the terms of the lease. It was said (page 60 of the report in 139 U. S.), "the courts, while refusing to maintain any action upon the unlawful contract, have always striven to do justice between the parties so far as could be done consistently with adherence to law, by permitting property or money parted with on the faith of the unlawful contract to be recovered back or compensation to be made for it. In such case, however, the action is not maintained upon the unlawful contract nor according to its terms, but on an *implied contract* of the defendant to return, or failing to do that, to make compensation for the property or money which it had no right to retain. To maintain such an action was not to affirm, but disaffirm, the unlawful contract." And the opinion of the court ended with the statement that, "Whether this plaintiff could maintain any action against this defendant, in the nature of a *quantum meruit*, or otherwise, independently of the contract, need not be considered, because it is not presented by this record and has not been argued. This action, according to the declaration and evidence, was brought and prosecuted for the single purpose of recovering sums which the defendant had agreed to pay by the unlawful contract, and which, for the reasons and upon the authorities above stated, the defendant was not liable for."

The principle is not new; but, on the contrary, it has been frequently announced, commencing in cases considerably over a hundred years old. It was said by Lord Mansfield, in *Holman* v. *Johnson*, 1 Cowper, 341, decided in 1775, that "the objection that a contract is immoral or illegal as between the plaintiff and defendant, sounds at all times very ill in the mouth of the defendant. It is not for his sake, however, that

the objection is ever allowed; but it is founded in general principles of policy, which the defendant has the advantage of, contrary to the real justice, as between him and the plaintiff, by accident, if I may so say. The principle of public policy is this: *ex dolo malo non oritur actio.* No court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act."

The cases upholding this doctrine are numerous and emphatic. Indeed, there is really no dispute concerning it, but the matter of controversy in this case is as to the extent to which the doctrine should be applied to the facts herein. Many of the cases are referred to and commented upon in the opinion delivered in the case in 139 U. S. 24, already cited. The right to a recovery of the property transferred under an illegal contract is founded upon the implied promise to return or make compensation for it. For illustrations of the general doctrine as applied to particular facts we refer in the margin to a few of the multitude of cases upon the subject.[1]

They are substantially unanimous in expressing the view that in no way and through no channels, directly or indirectly, will the courts allow an action to be maintained for the recovery of property delivered under an illegal contract where, in order to maintain such recovery, it is necessary to have recourse to that contract. The right of recovery must rest upon a disaffirmance of the contract, and it is permitted only because of the desire of courts to do justice as far as possible to the party who has made payment or delivered property under a void agreement, and which in justice he ought to recover. But courts will not in such endeavor permit any

[1] *Coppell* v. *Hall*, 7 Wall. 542; *Spring Company* v. *Knowlton*, 103 U. S. 49; *Logan County Bank* v. *Townsend*, 139 U. S. 67; *St. Louis &c. Railroad Company* v. *Terre Haute &c. Railroad Company*, 145 U. S. 393, at 408, 409; *Manchester & Lawrence Railroad Company* v. *Concord Railroad Company*, 66 N. H. 100; *White* v. *Franklin Bank*, 22 Pick. 181; *Utica Insurance Company* v. *Cadwell*, 3 Wend. 296; *Atcheson* v. *Mallon*, 43 N. Y. 147; *Leonard* v. *Poole*, 114 N. Y. 371; *Snell* v. *Dwight*, 120 Mass. 9; *Davis* v. *Old Colony Railroad*, 131 Mass. 258; *Holt* v. *Green*, 73 Penn. St. 198; *Johnson* v. *Hulins*, 103 Penn. St. 498; *Thomson* v. *Thomson*, 7 Ves. 470; *Sykes* v. *Beadon*, L. R. 11 Ch. Div. 170; *Brooks* v. *Martin*, 2 Wall. 70.

recovery which will weaken the rule founded upon the principles of public policy already noticed.

We may now examine the record herein and learn the grounds for the recovery which has been permitted, and determine therefrom whether the judgment in favor of the Central Company should be in all things affirmed, or if not, then how far the liability of the cross-defendant extends, and, if possible, what should be the amount of the judgment against it.

In referring the case to the master for the purpose of taking the account between the parties the learned District Judge stated the principle upon which the liability of the cross-defendant rested. He said:

"The property must therefore be returned or paid for. The former is impossible. The property has substantially disappeared. It has become incorporated with the business and property of the plaintiff, and cannot be separated. Compensation must therefore be made. What, then, is the measure of compensation? Clearly, we think, the value of the property when received, together with its earnings since, less the amount paid as rent. In ascertaining the value the annual rental may be considered, but it does not afford a conclusive nor an entirely safe measure of value, because the unlawful consideration (that the Central Company would abstain from exercising its franchises) entered into it. For the same reason the earnings cannot be measured by the rent. The value of the property and earnings must be ascertained from a careful examination of the property, the business and its earnings at the time they passed into plaintiff's hands and subsequently. It is not their value to the plaintiff we want, but to the defendant; in effect, what is lost by parting with them. The value of both property and earnings may have been worth more to the plaintiff with the business united, but this cannot be considered."

Acting under these directions of the court, the master in his opinion said:

"Passing to the consideration of the main question raised in the present reference, viz., what the Central Transportation Company lost by the transfer of its property to the Pullman

Company, the measure of damages as determined by the court requires the master to ascertain:

"(1.) What was the value to the Central Transportation Company in 1870 of the property transferred?

"(2.) What was earned by the Pullman Company between January 1, 1870, and January 1, 1885, from the use of the property transferred?

"(3.) The difference between the amount so received by the Pullman Company and the rental paid by it to the Central Transportation Company for the above period.

"(4.) The total amount to be paid by the Pullman Company, as of January 1, 1885, deduced as above, together with interest thereon from January 1, 1885, to date of final decree."

The master proceeded to determine the value in 1870 of the property then transferred. In ascertaining it he said:

"The value of the stock on the street is a positive indication of the estimate placed on the property by the public. That it is not entirely a satisfactory measure of value must be conceded, but in the judgment of the master, supported as it is by the best independent estimate that the evidence affords, it should be accepted as the fairest criterion of value."

He accordingly reported the value of the property when received as $58 a share, (the par value being $50 per share or a total par value of $2,200,000,) making the total market value of the shares $2,552,000, which sum he reported as the value of the property transferred.

When the report came before the court, exceptions having been taken, among other things, to the findings of the value of the property when delivered, the court said:

"It is the value of the property at the time it should have been returned that the Pullman Company should be charged with. Inasmuch as this value would be difficult of ascertainment by the transportation company except by reference to the value in 1870, it was considered proper to direct the inquiry to the latter date. Presumably the value increased; the evidence fully justifies the presumption. If it decreased, the Pullman Company could and should have shown it. The

master's valuation in 1870 is therefore to be taken as the value in 1885, when the property should have been returned. The payment of this sum, with interest from January 1, 1885, seems necessary to a just settlement, treating the value of the use and the rents paid prior to that date as balancing each other. A decree may be prepared accordingly, dismissing the exceptions and confirming the report."

Judgment based upon the value of the property at $2,552,000 on the 1st of January, 1885, with interest from that time was therefore entered, and it amounted, as stated, to the sum of $4,235,044.

We are of opinion that the court erred in the manner of ascertaining the value of the property transferred by the Central Company. The market value of its stock was not a proper measure of the value of the property, and such error resulted in largely increasing the supposed value of the property which the cross-defendant was under liability to account for.

The capital stock of this corporation had been increased from an original amount of $200,000 in 1862 to $2,200,000 in 1870. During this time it had been doing an increasing and a profitable business, and it was supposed that such business might increase in the future. The market price of the shares of stock in a manufacturing corporation includes more than the mere value of the property owned by it, and whatever is included in that price beyond and outside of the value of its property is a factor which in a case like this cannot be taken into consideration in determining the liability of the cross-defendant. Whatever that something may be it is not that kind of property which was delivered or that can be returned or compensation made in lieu of its return. It is not property at all within the meaning of the word as understood in such a case as this. The value of the franchise for one thing enters into the computation of market value. This was, of course, not assigned to the Pullman Company, nor were the shares of the capital stock of the Central Company, all of which remained in the hands of its original owners. The probable prospective capacity for earnings also enters largely into

market value, and future possible earnings again depend to a great extent upon the skill with which the affairs of the company may be managed. These considerations, while they may enhance the value of the shares in the market, yet do not in fact increase the value of the actual property itself. They are matters of opinion upon which persons selling and buying the stock may have different views. A liability to return or make compensation for property received cannot be properly extended so as to include other considerations than those of the actual value of that property.

In this particular case a consideration entering into the market value of the shares must have been the probability or possibility of renewals of the contracts owned by the company for the use of its cars upon the railroads of the companies with which it had such contracts and the possibility of extending its business in the future under contracts with other railroads. These considerations, while they affect more or less the value in the market of the shares of a corporation, do not constitute the value of the property which a party impliedly promises to pay for upon the agreement being determined void under which the property was received. The faith which a purchaser of stock in such a company has in the ability with which the company will be managed, and in the capacity of the company to make future earnings, may be well or ill founded. It is but matter of opinion which in itself is not property. While the value of the property is one of the material factors going to make up the market value of the stock, yet it is plainly not the sole one. Mere speculation has not uncommonly been known to exercise a potent influence on the market price of stock. The capacity to make any future earnings in this case by the lessee arose out of the transfer of the property to it and grew out of the lease itself, and that capacity would therefore be partly founded upon the illegal contract and could not otherwise exist.

As the market value of the shares of this stock was made up to some extent, at least, of certain factors which the lessee cannot, under the rules of law, be held responsible for in this case, it follows that such value cannot furnish a safe guide in

measuring the responsibility of the lessee in an utterly void lease. The court therefore erred in taking the market value of the shares of this stock as a proper or just measure of the value of the property transferred.

We must therefore take the property that actually was transferred and determine its value in some other way than by this resort to the market price of the stock. The property transferred consisted (*a*) of cars, bedding, etc.; (*b*) contracts which the Central Company owned with railroad companies for the use of its cars on their roads; (*c*) patents covering the construction and use of sleeping cars owned by the Central Company and by it transferred under the lease to the Pullman Company; and (*d*) $17,000 in cash. It seems to us these values must be taken separately, because, for reasons hereafter suggested, the value of the contracts and patents does not enter into the problem.

As to the value of the cars. We agree with the court below that it is now impossible to decree their return, for the reasons stated. They have substantially disappeared. The property has become incorporated with the business and property of the Pullman Company. Compensation therefore must be made. The master found that the value of the cars as vehicles, together with their equipment, at the time of the transfer, was $710,846.50. This is probably a pretty high figure judging from the whole evidence in the case upon that subject, yet still we are inclined to think that the master was justified in arriving at that sum. We take this value for the reason that the Pullman Company agreed in the lease to keep the cars in good order and repair, and renewed and reconstructed as often as might be needful during the whole term of the lease. During the fifteen years elapsing from 1870, up to January, 1885, no violation of the terms of the lease by either party is complained of, and we think the whole transaction between the parties during those fifteen years must be treated as closed, so that no examination should be made in regard to anything that happened within that time. We must assume the provisions of the lease were fully carried out by both parties, particularly as no complaints were made

of non-performance. We therefore assume that the cars were kept in good order, and when necessary were reconstructed and renewed up to January, 1885. The value at that time may be taken to be as great as the master found it to be for 1870. It is very probable the assumption is not in accordance with the fact, and that the property had greatly depreciated. But as we refuse to look into the transactions between the parties during that period, we will hold the value in 1885 to have been the same as in 1870, on the presumption that the Pullman Company fulfilled its obligations between those dates. What rule of compensation should be deduced from such finding will be alluded to hereafter.

We next come to consider the various contracts. They were entered into with different railroad companies for certain definite periods, and their time of expiration was stated in the contracts themselves. They were valuable only as they were used by the lessee, and its right to use them sprang from and was determined by the lease itself. They were assigned to the lessee for the purpose of enabling it to avail itself of the rights therein created and to use the cars with the consent of the railroads to which the contracts applied. Whether any use was made of these contracts or not they became daily less valuable as they daily neared their termination. The use made of them did not impair their value. The passage of time did that. The rental that was paid by the lessee included compensation for use, and to that extent the transaction was closed and the compensation paid up to the time when the contracts themselves had expired, which was prior to the time when the lease was declared void and payment of rent ceased. There is no principle with which we are familiar that will permit the value of those contracts when assigned to the Pullman Company to enter into and form a part of the value of the property for which the company is to make compensation, when from the nature of the thing itself, its value necessarily, and from the simple passage of time, decreased daily, and upon the arrival of the date named for the expiration of the contract it ceased to have any value.

We think the contracts were not extended by the legislative

extension of the charter of the Central Company by the act of 1870. Some of these contracts were to last during the corporate life of the Central Company. At the time they were made the charter of the company would expire in twenty years from December 30, 1862, or on December 30, 1882. We do not think the contracts meant that they were to cover any further time to which the legislature might thereafter extend the charter of the company. Some language to that effect would have been contained in the contracts if such had been the meaning of the parties. All the contracts had therefore expired by the end of 1882.

Now upon what principle can it be urged that the lessee should compensate the lessor for the value of these contracts when delivered to it when it had paid for the use, and the property was of such a nature that it became valueless by mere limitation of time? In 1885 they had gone out of existence, and, of course, had no value. The basis for a recovery of property or compensation for its value, in cases of illegal agreements, rests upon the implied contract to return it or pay for it, because there is no right in the party in possession to retain it. If at the time when otherwise it would or ought to be returned it has ceased to exist by virtue of the termination of its legal existence, how can it be returned? How can a promise to return or make compensation therefor be implied in the case of a contract having but a limited time to run, and the value of which diminishes daily until the contract itself and its value are wholly extinguished by expiration of time, and where the use of this intangible right during its existence was fully paid for by the party to whom it was assigned? There is no implication of a promise to make any further compensation for such a species of property than is made by paying for its use while it remained in legal existence. When that time expired the value was gone, and while it lived it had been paid for.

We have been able to find no case where any principle was laid down which would authorize or justify a recovery of the value of property at the time of delivery, which, before its return became proper, had passed out of existence by limita-

tion of time, and the use of which was paid for during its lifetime.

What other contracts may have been made by the Pullman Company with railroad companies would form no factor in the value of the contracts assigned. If others were obtained, they had never been the property of the Central Company, and the latter could only make a pretence of a claim in regard to them by virtue of and through the illegal contract. A resort to the illegal instrument cannot be permitted for the purpose of sustaining any recovery.

The same may be said of the patents which the Central Company also undertook to transfer, as they had all expired before January, 1885. They simply protected the use of the cars which had been constructed under them, and they diminished in value as each day brought them nearer to their expiration, and when that time arrived they were absolutely valueless. During all that time they were included in the consideration for the payment of rent made by the Pullman Company under the terms of the lease. The contracts and the patents must be eliminated from the value of the property.

Nor can we accede to the view that the Pullman Company is liable for the earnings of the property which it realized by means of putting such property to the very use which the lease provided. It had the right while both parties acquiesced to so use the property.

There is no question of trustee in the case. *Root* v. *Railway Company*, 105 U. S. 189, 215.

The property was placed in its hands by the lessor and in accordance with the terms of the agreement. It was not then impressed with any trust according to any definition of that term known to us. Although the title did not pass and was not intended to pass, the lessee did nothing with the property other than was justified by the lease. His liability is based only upon an implied promise to return or make compensation therefor. This implication of a promise would not arise until one or the other party chose to terminate the lease, for the law implies such promise in order only that justice, so far as possible, may be done. So long as neither party takes

any objection to the agreement, and both carry it out, there is no room for any differences, and no promise to return the property or make compensation is necessary, and none is therefore implied. The use of the property is lawful as between the parties, so long as the lease was not repudiated by either, and the rent compensates for the use. After the repudiation the promise is then implied, and it is fulfilled by the payment of the value of the property at the time the promise is implied and interest thereon from that time.

As to the claim of the lessor that its business has been broken up, its contracts with railroads terminated and the corporation left in a condition of inability to again take up its former plans, and that all this should be regarded in the measure of the relief to which it should be entitled, the same considerations which we have already adverted to must be entertained. These are results of the illegality of the contract entered into between these parties, and its subsequent repudiation on that ground, and in regard to such illegality the Central Company is certainly as much in the wrong as the cross-defendant herein. The former knew the extent of its obligations under its charter as well as the latter did, and the illegal provisions of the lease were quite as much its doings as they were those of the cross-defendant. To grant relief based upon these facts would be so clearly to grant relief to one of the parties to an illegal contract, based upon the contract itself or upon alleged damages arising out of its non-fulfilment, that nothing more need be said upon that branch of the subject. It is emphatically an application of the rule that in such a case the position of the defendant is the better.

We conclude that the cross-defendant is not liable for the contracts and patents transferred, nor for the possible damage the Central Company may have sustained, as above stated. It is liable for the value of the cars, furniture, etc., transferred. It is a liberal estimate of the value of this property to say that it amounted in 1885 to as much as it did in 1870, yet we are disposed to deal in as liberal a manner with the cross-complainant as we fairly may, while not violating any settled principle of law, in order to give to it such measure of

relief as the circumstances of the case seem to justify. We therefore take the value of the property in the cars, etc., in 1885 at the sum of $710,846.50. To that, we think, should be added the $17,000 cash received from the Central Company, making a total of $727,846.50 and interest from January 1, 1885, for which the cross-defendant is liable, together with costs.

Although the Central Company may have been injured by the result of this lease, yet that is a misfortune which has overtaken it by reason of the rule of law which declares void a lease of such a nature, and while the company may not have incurred any moral guilt it has nevertheless violated the law by making an illegal contract and one which was against public policy, and it must take such consequences as result therefrom.

The judgment appealed from must be

Reversed and the case remitted to the Circuit Court for the Eastern District of Pennsylvania, with directions to enter a judgment for the Central Transportation Company in accordance with this opinion.

MR. JUSTICE HARLAN dissented.

MR. JUSTICE WHITE dissented on the ground that the judgment appealed from was for the correct amount and should not be reduced.